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PEERAGE  
AND PEDIGREE





# PEERAGE AND PEDIGREE

## STUDIES IN PEERAGE LAW AND FAMILY HISTORY

BY

J. HORACE ROUND

M.A., LL.D.

VOLUME ONE

LONDON  
JAMES NISBET & CO., LTD.  
& THE ST. CATHERINE PRESS

191





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## ERRATA ET ADDENDA

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- Vol. I, 31, note 1. The Bertie grant now at Grimsthorpe appears to be a copy "in the handwriting of Sir William Dugdale" (13th Report, App. VI, p. 206).
- Vol. II, 97, l. 14. *For* "It they can make" *Read* "If they could make".
- Vol. II, 155, l. 4, and 156, l. 11. Henry Tyes is named as the *Vexillifer* in 1192, but in Sept. 1191, Hoveden expressly states (III, 129) that Richard, having fixed his *signum* in the midst, entrusted his 'dragon' (banner) to Peter de Préaux, in spite of the claim of Robert Trusbut to bear it by ancestral right. The alleged 'Sir Michael' is ignored. This mention of the 'dragon' flag is important, as anticipating the better known 'dragon' flown by Henry III.
- Vol. II, 186 last line. *For* "Sir Francis Smith" *Read* "Francis Smith".
- Vol. II, 213, l. 5. *For* "Francis" *Read* "William".
- Vol. II, 213, l. 6. *For* "1749" *Read* "1759".
- Vol. II, 232-3. In the suit brought by Edward Carlos against William Smith, the trial began in 1754. William Smith died early in 1758, and Edward Carlos died in 1764. The Carlos pedigree spoken of in the text seems to have been drawn up after Edward's death, for his sisters. But the "pedigree on behalf of William Smith" must, it will be seen, have been drawn up in 1754-8, not in 1764. Dr. Copinger states that the defendant sold "several estates" "fearing the issue of the lawsuit", as well he might, in view of his fictitious pedigree (see p. 236).
- Vol. II, 234. It is extremely difficult to convey to the reader the points of agreement and of difference in the conflicting

## ERRATA ET ADDENDA

pedigrees for Carlos and for Smith, both of which are erroneous. But it is essential to grasp them. Both pedigrees recognise the existence of Thomas Smith of Earl Shilton, whose daughter mar. a Yaxley; but his brother *Robert*, who is claimed as the ancestor of the Smith-Caringtons, is stated by the Carlos pedigree to have died s.p., while the Smith pedigree knows nothing of his alleged marriage. If it be claimed that the Robert of the previous generation in the Carlos pedigree is the one from whom descent is alleged, then that pedigree distinctly states his issue to be extinct.

Vol. II, 239, l. 29. For "Commitee" Read "Committee".

Vol. II, pp. 314, 321, etc. I may have inadvertently attributed to Mr. Fox-Davies expressions employed by 'X', as one cannot always distinguish between these two writers, who not only advance the same contentions, but frequently employ the same words. Their literary style also has much resemblance, though one speaks of "a rotten argument" (*Armorial Families*, 1895, p. xxxix), and the other of a "rotten idea" (*Geneal. Mag.* I, 603.)

Vol. II, p. 321. I find that my comparison with a peerage (which "few can obtain") is strangely supported by 'X' himself, who justly points out (*The Right to bear arms*, 1900, p. 12) that coronets are valued "simply because the possession of a coronet is still recognised as a matter of privilege", and that "the very few" ancient families "who still possess 'badges' use them because it is now impossible to get a badge". Unfortunately, the College of Arms has ruined, since then, even this exclusive distinction by starting the practice of granting badges (as we learn from Mr. Fox-Davies).

## PREFACE

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Of the two chief subjects which are dealt with in these volumes—Peerage law and family history—the former occupies most of the first, and the latter most of the second. The opening article, however, illustrates their close connexion, for the claim of Richard Bertie to his wife's ancient barony raised, in addition to a question of law, that of his own origin.

Although not only the history of the peerage, but the law affecting the descent of dignities, has been with me for many years an object of frequent study, certain notable cases which have lately come before the House, and on sundry points of which my opinion has been sought, have led me to give that law more especially my attention and to believe that there is room for its treatment on fresh and historical lines. Occupying, as it does, a midway position between law and history, this very interesting department of institutional research has been left mainly to the lawyer. Constitutional historians, such as Hallam, Stubbs, and Gneist, have, it is true, found themselves obliged to include it in the purview of their works, but only for early times. For the later period we are dependent on the labours of legal writers,—the text books of

practical lawyers, such as Cruise or Sir F. Palmer, or Sir William Anson's standard work on the law and custom of the constitution, so far as it deals with these questions,—the Lords' reports on the Dignity of a Peer, or the book which approaches nearest to an historical treatment of the subject, Mr. Pike's 'Constitutional History of the House of Lords'.

Scattered also among the 'cases' presented on behalf of claimants, the arguments of counsel at the bar of the House, the 'judgments' delivered by the Law Lords, and the commentaries on cases by Nicolas, himself a peerage counsel, is a mass of miscellaneous learning. But there is no encouragement for the production of a systematic work that shall deal comprehensively with the points raised and decided in the whole series of cases. The result is that, when a question is raised, it is by no means easy to ascertain what has been decided on the subject, and, as will be seen in these pages, this has led to inconsistent and even conflicting *dicta*. It is the business of counsel to expend their erudition and their labour on the preparation of their clients' cases: it is not their business, after the decision, to record the results of their researches *pro bono publico*.

What was the first valid Parliament, that is to say, the first Parliament writs of summons to which are accounted valid? Must the writ and sitting be proved for the same person, or can a sitting in a later generation be 'referred' to the writ issued to the person first summoned? Did the occurrence of a wife's surname in the style by which her

husband was summoned, or in which he sat, constitute proof that he held a barony vested in his wife? These are some of the points on which, I shall endeavour to show, there has been demonstrable confusion and even contradiction.

But, apart from these questions, which are mainly legal in character, I shall approach the subject of peerage law, and, to some extent, of law generally, from the standpoint of one who is not a lawyer, but only a student of history. In the first place I shall show the importance of the critical use of 'authorities' and shall illustrate the necessity, for research on the history of peerage law, of accuracy in facts and dates. In the first, second and third of my papers will be found surprising instances of the misapprehension caused by failing to arrange documents in their proper order and events in their right sequence (pp. 7-8, 57-8, 76-8). In the fourth the frequent indifference of lawyers to mere facts and dates will receive additional illustration.

I have gone, however, further than this. In the paper entitled "The muddle of the law" I have ventured to contrast the methods employed in law and history and to claim that, in their treatment of 'authorities,' the lawyer is still in the Middle Ages, but the historian is a man of science.

The lawyer's vision is bounded by his "books;" the historian goes behind his books and studies the facts for himself. What is "authority" for the one is absolutely none for the other. As a great scholar has finely said: "What the lawyer wants



is authority, the newer the better ; what the historian wants is evidence, the older the better." Against the error, the vulgar error, that a modern book is an " authority " for a medieval event, the historian of to-day is ever on the watch to raise his voice in protest. In the words of Freeman,—

He must ever bear in mind himself, and he must ever strive to impress on the minds of others, that. . . all that the newest German book can tell him will after all be but illustrations of those original authorities without a sound and thorough knowledge of whose texts all our finest talk is but shadow without substance. To the law and to the testimony, to the charter and to the chronicle, to the abiding records of each succeeding age, writ on the parchment or graven on the stone—it is to these that he must go himself and must guide others.<sup>1</sup>

The fact that Mr. Freeman was, notoriously, the very last man to go himself to " records..... writ on the parchment " does not affect the truth of the principle he here proclaims.

As an illustration of the mischievous results of the lawyer's inveterate practice of obtaining information at second, or even third hand through his " books," instead of going to the fountain head, I have selected the use which has been made, in some recent historic cases, of a passage in Coke's ' Institutes.' And I have also subjected to searching criticism Coke's famous report of ' the Lord Abergavenny's case ' and the doctrine he has based upon it in his ' Institutes.' Indeed, I have gone so far as to claim that the question at issue in that case and the judges' opinion thereon were wholly different from those which he records, and that

<sup>1</sup> *The office of the historical professor* (inaugural lecture), p. 25.

the doctrine which plays so large a part in the law of 'baronies by writ,'—namely, the necessity of a sitting,—rests on no foundation.

Under 'the Barony of Clifton case' I have dealt with the much-contested doctrine that where a writ and a sitting can be proved, a descendible barony was created, and have endeavoured to trace it from its origin through its later development and growth. The historical treatment of such questions, and indeed the use of such language, have naturally brought me into conflict with the practically convenient maxim that "the law is always the same," that it knows nothing of development or growth. And the rigid application of this doctrine, in its most extreme form, in the Earldom of Norfolk case, is the subject of a somewhat vigorous protest, on historical grounds, in these pages. The sympathy, I hope, of historians will be with me in this protest.

Upon one point I would, in this place, anticipate a possible objection. In the opening paper I have tried to show the importance of the Willoughby d'Eresby case in the history of barony *jure uxoris* or by the courtesy (of England),<sup>1</sup> and have argued, on historical lines, that, as the King's ruling in the Wimbish case had restricted barony *jure uxoris* to cases in which the husband was tenant 'by the courtesy,' so the result of the Willoughby case was a further development or change which eventually excluded, in practice, even tenants 'by the courtesy' themselves (pp. 16, 24). On the other hand, in the paper on 'The muddle of the law,'

<sup>1</sup> i. e. after issue born.

I have applied to this same question the maxim that 'the law is always the same', and have contended, on legal lines, that the law upon this subject before the Tudor age must also be the law now, as, by general admission, it has never formally been altered. Between these two contentions there is no contradiction on my part; for they are avowedly advanced from two conflicting standpoints.

Lastly, if exception should be taken to the phrase 'The muddle of the law,' I would point out that it is used with the intention of provoking and stimulating thought and of challenging the unhistorical methods which have led to so much confusion.

Turning now to family history, I have here further endeavoured, by treating it in the modern critical spirit and on the same principles as other history, to rescue this interesting branch of study from the hands of those pedigree-mongers who made of it a byword and a reproach. Those of us who care for ancient descent and the tenure of ancestral lands view with indignation the ridicule aroused by claims to either, consequent on that jostling of the true by the false which has led at times to the hasty conclusion that all are false together. Although the advance of that truthful genealogy for which the modern school is working<sup>1</sup> must, of necessity, be slow, there is reason to believe that the public are awaking to the very untrustworthy character of much of the informa-

<sup>1</sup> As in Mr. Barron's *Northamptonshire Families* and Mr. Warrand's *Hertfordshire Families* in the 'Victoria County History'.

tion which is put before them as authentic, and would gladly be helped to distinguish true from fictitious claims in the light of modern research. The results of that research are by no means merely destructive: it gives to the ore its true value by purging away the dross.

That the rejection of fabulous pedigrees, the exposure of spurious records, and the substitution of fact for fiction in the realm of family history will, in some quarters, prove distasteful is only what one must expect. In this domain, to say the least, there has never been a passionate devotion to truth for truth's sake; her foes are many, and her knights are few. For truth is deemed a sadly dull and unromantic thing: it is not for the truth that men seek, but for that which is pleasant to believe. Poor, ill-clad, shivering truth stands pitiful by the way; for men have ever passed her by in search of that which they desire.

The only criticism, however, to which exception can justly be taken is that which is careless or ill-informed or which proves to be without foundation. From such, I hope, this work is free. It will, at least, be searched in vain for statements so extraordinary on the bearers of ancient titles and historically famous names, as Mr. Baring-Gould's assertions that "the Earl of Haddington is not a Hamilton, but an Arden," and that "the Earl of Shrewsbury is not a Talbot, but a Chetwynd."<sup>1</sup> If there is fiction to be destroyed, there is also truth to be upheld.<sup>2</sup>

<sup>1</sup> *Family names and their story* (1909), p. 392.

<sup>2</sup> I would invite the reader's attention here to my paper on "The origin of the Shirleys and of the Gresleys" (34 pp.) in the *Derbyshire Archæological*

As an example of that wild and baseless depreciation of the origin of noble houses which is just as much to be avoided as flattering and absurd fiction, I venture to cite this paragraph from the work of Mr. Baring-Gould :—

The modest Le Boteler was the proto-parent of the family of *Butler*. James Butler, Duke of Ormond, derived in lineal descent from a grave individual, bottle in hand, who stood behind some Prince, or perhaps only petty squire, and said deferentially, in the corresponding terms of the day : “ Port or sherry, sir ? ” Earl Ferrers who shot his valet <sup>1</sup> for showing lack of proper respect, might with advantage have looked back to the founder of his family in a leather apron, shoeing the Bastard’s horse before the Battle of Hastings (p. 102).

Of the few great feudal houses still extant among us, the Butlers stand pre-eminent. The Marquesses of Ormonde are the heads of a house which, even from the twelfth century, has ranked among the nobles of the sister isle. On the pages of Irish history, theirs is a mighty name. To say that, because they adopted that name on receiving the great feudal office of Butler of Ireland, they sprang from a mere butler, is as silly a statement as if a man confused the mere parish constable with the Constable of England or of France. Yet its author seems to be proud of making it, for he subsequently claims to “ have shown in another chapter that from household domestics . . . . . men have risen to the surface and have flushed our nobility with new and vigorous life . . . . . cooks have . . . . .

*and Natural History Society’s Journal* (1903), in which I vindicated the pedigrees of these two most ancient houses from a wanton and baseless attempt to discredit them.

<sup>1</sup> As a matter of fact, it was his land steward.



wiped the gravy from their fingers . . . . . and the butlers have slipped from behind their masters' chairs" (p. 275).

The gibe at the origin of the earls Ferrers is an even stranger blunder. For in the first place the earls are members, not of the house of Ferrers, but of that of Shirley, with a pedigree from the Conqueror's time; and in the second, Henry de Ferrières, the mighty founder of the house of Ferrers, was no mere shoeing-smith, but the Norman lord of Ferrières. One wonders whether the author imagines that 'De Ferrières' means a shoeing smith; for on two pages, by a luckless shot, he identifies a "cordwainer" as a rope-maker (pp. 143, 149), and on another, by a similarly luckless shot, derives "corveiser" from "forced labour"<sup>1</sup> (p. 353)! It is, unfortunately, needful to insist that those who would instruct the public on antiquarian subjects are found at times to stand in need of such instruction themselves.

On the other hand, the same work, in its acceptance of the Grosvenor story, provides us with a notable example of flattering fiction.

It is now more than seven years since, in the first volume of *The Ancestor*—which was widely read at the time,—there appeared a valuable and exhaustive article of more than twenty pages, by Mr. W. H. B. Bird, on 'The Grosvenor myth'. One might have expected that, after this, no repetition of that well-known story would be possible. Yet, only the other day, the visit of the

<sup>1</sup> For the interesting charter of Henry II admitting the cordwainers to the gild of corveisers at Oxford, see *Calendar of Charter Rolls*, II, 34.

King to Eaton produced the inevitable paragraph. We were gravely assured that

since Norman days the Grosvenors have been land-owners in Cheshire, and it was only last month that the Duke, by virtue of his descent from Gilbert le Gross Veneur (a near relative of the Conqueror) took up, as it is called, the freedom of the City of Chester. It was Hugh Lupus (uncle of this same Gilbert) who was one of the first Norman-born earls of Chester... As is fitting, the first thing to strike the eye of the visitor for the first time to Eaton is the splendid equestrian statue of this Hugh Lupus, Earl of Chester, whose distinctive names, by the way, have been carried down from generation to generation in the Grosvenor family, etc. etc.

That Hugh was not called 'Lupus', that he was not uncle of an (imaginary) "Gilbert le Gross Veneur", and that the first Grosvenor to be christened Hugh-Lupus was the late duke himself, are facts which the public at large will probably never grasp. As Mr. Bird justly observed, "the vitality of the legend is remarkable. Not merely has belief in it been kept green at Eaton, as the great equestrian statue before the house and the baptismal names of the late duke testify, but perhaps no other story of the kind is as widely known and credited."

Even in that work which he is pleased to term "A complete guide to Heraldry" (1909) Mr. Fox-Davies prints in full (pp. 278-280), from "The Tauntons of Oxford, by One of Them," the frightful nonsense it contains on this subject. We there read, of "the ancient and almost Royal descent of this illustrious race," that "Hugh Lupus, Earl of Chester, was a son of the Duke of

Britanny,<sup>1</sup> as is plainly stated in his epitaph," and that his nephew Gilbert was, therefore, maternally the Dukes' descendant. "The Grosvenors," we read further, "probably inherited obesity from their relative," the earl, and were thence styled 'Gros' Venour!

The principal genealogical article is that on "some 'Saxon' houses," in which I have set myself to deal on a fairly exhaustive scale with claims to 'Saxon' descent, by which is meant a known descent older than the Norman Conquest. This, I presume, is what Mr. Fox-Davies means when he states, speaking in his own tongue, that "some number of the very older (*sic*) families are Saxon."<sup>2</sup> Both the number and the confidence of these claims will be found somewhat surprising in view of the total lack of evidence adduced by those who make them. The grouping and classifying of these cases will prove, it is hoped, instructive, and among the points I shall endeavour to impress upon the reader's mind I would here specify three. The first is the worthlessness, as authority, of so-called family "tradition" when invoked for facts of the eleventh or even the twelfth century. Such "tradition" usually proves to be merely a guess by some antiquary or member of the family at a period which may not even be remote.<sup>3</sup> The next is that English pedigrees do not begin till the twelfth century, save in the case of a handful of families,

<sup>1</sup> He was, of course, a son of Richard, Vicomte d'Avranches.

<sup>2</sup> *Armorial Families* (1895), p. viii.

<sup>3</sup> Mr. W. H. Stevenson has similarly observed, of local tradition, that "we have in this an instructive instance of the worthlessness of 'tradition,' which is here, as so frequently happens elsewhere, the outcome of the dreams of local antiquaries" (*Asser's Life of Alfred*, p. 262).

who, with more or less certainty, can be carried back as far as the latter part of the eleventh. The third is that the use of surnames began in England later still.<sup>1</sup>

I would here thankfully acknowledge that Mr. Baring-Gould's book, which I have only seen since this paper was in type, insists no less strongly on the late origin of surnames and on the impossibility of their being inherited from days before the Conquest. Yet, quite recently, it was stated, as merely an interesting fact, that a family had been traced back, in England, for no less than two thousand three hundred years! Of an Evesham "vendor of cattle medicines" the *Daily Mail* wrote (27 Nov. 1909):—

When it is stated that Mr. Balhatchet's family is traced back in Cornwall on the authority of Professor Thorpe F.S.A. to a Phœnician named Baalachet who came over to manage a Cornish tin mine in the year 400 B.C., it will be seen that Mr. Balhatchet may well be described as an interesting personality.

If the learned Professor is correctly cited, which one finds it hard to believe, the Society of Antiquaries may indeed be proud of so unparalleled a feat. But Mr. Baring-Gould—who may here be speaking from local knowledge—asserts that "the name Balhatchet signifies the hatchet (*i.e.* bar, thrown across a gap) giving access to a *bal*, or mine." Thomas Becket, however, in his youth, had a friend nicknamed 'Bail-hache,' and Bailhache is to this day a surname, I believe, in France. Pos-

<sup>1</sup> This, of course, is only a general rule.

sibly therefore, we have here the origin of this English surname.

Again the recently issued history of the Hicks (Beach) family, a house of Tudor origin, in which their history was traced to early Saxon times—on the supposition that their name is identical with that of the Hwiccas—is another illustration of the amazing and almost incredible ideas which prevail upon these subjects. In my opening paper I have shown that the Berties were still believed, little more than thirty years ago, to have come from ‘Bertieland’ on the borders of Prussia “in company with the Saxons.” But in their case, at least, it may be pleaded that this is no modern fable, but rests on a forged pedigree of Elizabeth’s day, that great breeding time for these productions, which we are still rending one by one. Not only in Latin, but in Old French and in Old English also, the forger exercised his skill. And, in the case to which we are now coming, the grant of a Royal licence even in the present reign, preserves the memory of his work.

With regard to the paper dealing with ‘The great Carington imposture,’ I would ask that certain points be borne in mind. The first is that I am criticising a work which the outside public were invited to buy. In a full page advertisement inserted in *Notes and Queries* and in the prospectus that was circulated, they were invited to buy it at five guineas on the ground that it was “of very considerable general historical importance,” and that copies “should soon be absorbed in reference libraries.” One need not, therefore, scruple to

criticize the statements it contains. The next is that prospectus and advertisement alike describe it as "By Walter Arthur Copinger," and that Dr. Copinger speaks of himself as having "compiled" it. He describes himself as "fully aware of the imperfections of his work," but claims that he "has not written up the subject" and that "the disclosure of facts and verification of evidence have been his main objects." He further commits himself to the statement, of the pedigree "in a direct male line to the Conquest," that "each descent is fully verified." We are doing him, therefore, no injustice in assuming that he takes upon himself full responsibility for the volume.<sup>1</sup> Lastly, if any of my readers should think that I have dwelt upon the book at excessive length, I would ask them to remember that it is not only the most pretentious family history that has appeared for many years, but represents a remarkable revival of that spirit which led the new gentry, when Tudors sat upon the throne, to seek pedigrees of great splendour. Moreover, it receives a *cachet* from Dr. Copinger's name and position which will give this 'Conquest' pedigree, in the eyes of the general public, an appearance of considerable authority.

As I have demolished, once for all, the whole 'Carington' story, I wish, in justice to the College of Arms, to point out that it has not accepted, in its corporate and official capacity, that story as genuine. It is indeed asserted in 'Burke's Landed Gentry,' and the assertion is prominently cited in

<sup>1</sup> Except the two Appendices at the end, which were the work of the late Mr. Smith-'Carington.'

Dr. Copinger's book—that over 700 years of the descent has been “registered” in the College of Arms, but I am assured that the ‘Carington’ descent has *not* been officially “recorded.” With regard to the later pedigree, from Tudor times downwards, it will be found to raise a question of great interest to genealogists, namely the proof of descent, where identity is the main issue.

It will be seen in the pages of these volumes that it is, unhappily, still necessary “to expose many an oft-repeated error”,<sup>1</sup> which Burke's ‘Peerage’ and ‘Landed Gentry’ steadfastly persist in repeating, with the addition, occasionally, of fresh ones. I am, of course, by no means alone in protesting against the fables with which the name of ‘Burke’ has been so long associated. Apart from Mr. Freeman's indignant protest in 1877,<sup>2</sup> the ‘Peerage’ and the ‘Landed Gentry’ were the subject of the following noteworthy and weighty criticism in 1865.

The reader who has followed me thus far will probably be of opinion that the works which we have been examining are in no respect worthy of the present condition of genealogical science. It is a remarkable circumstance that side by side with the laborious and critical genealogists there should have sprung up a set of venal pedigree-mongers, whose occupation consists in garbling truth and inventing falsehood,—a calling which they pursue with the most untiring assiduity. But it is unfortunate indeed that the easy credulity of Sir Bernard Burke should allow him to be led blindfold by these obscure persons, whose most palpable fictions he seldom

<sup>1</sup> The phrase is actually taken from the Preface to ‘Burke's Peerage’ for 1909 (see below).

<sup>2</sup> ‘Pedigrees and pedigree-makers’ in *Cont. Rev.* XXX, 11-41.

shows the least hesitation in adopting. Statements which would never otherwise have obtained a moment's credit, have been allowed to go forth with the imprimatur of the chief herald of Ireland, on the strength of which they are relied on by a large section of the public.<sup>1</sup>

After pointing out that 'Burke's Peerage' and 'The Landed Gentry' "are profusely quoted in books circulating on the Continent as well as Britain," the writer proceeded:

Year by year new fictions, belonging not to respectable legend, but to vulgar imposture, are obtaining general acceptance on their authority; it is therefore high time that the public should be disabused of their faith in these books.

In this passage the stress is laid upon the right point. As Mr. Freeman insisted, the grievance is that "monstrous fictions" should obtain currency and authority by being given to the world under the ægis of a King of Arms.

Although his violent attack proved fatal to some of them, we find the organ of serious genealogists obliged to write as follows, many years later, after referring to Sir Bernard Burke's "uncritical method":—

We may as well at the outset express our regret that in these days, when no genealogist would dream of printing a pedigree without carefully consulting the records, adding exact dates, and giving proper references, Sir Bernard Burke's sons<sup>2</sup> deem it consistent with their rep-

<sup>1</sup> *Popular Genealogists: The Art of Pedigree Making*. Edinburgh. 1865. (The book is known to have been written by Mr. Burnett, who became Lyon King of Arms in 1866).

<sup>2</sup> The reference is to Mr. Ashworth Burke's statement that he could not have brought *The Colonial Gentry* "to a successful issue were it not for the heraldic and genealogical skill of my brother, Mr. H. Farnham Burke, the Somerset Herald of Her Majesty's College of Arms."



utation to issue to the public works of this character, in which the same loose statements, the same unbridged chasms, and often the same apocryphal legends, sometimes, it is true, tempered with the qualifying 'It is said' or 'It is probable,' appear in edition after edition. <sup>1</sup>

The reviewer then proceeded "to enumerate a few of the errors and inconsistencies which have occurred to us in perusing this book, many of which will indeed be patent to the merest tyro in the study of family history." Among them was the statement, under 'Graeme,' that

This ancient family derives its lineage from Graeme, who was made Governor of Scotland and Guardian to the young king Eugene II in 435. Graeme broke down the famous wall of Antininous.

On which he justly observes that it illustrates "the old-fashioned principle which has done so much to discredit genealogy and heraldry in the eyes of sensible men, that any exploded myth, any rubbish in fact, is good enough for family history.... It is almost incredible that a legend, which would now-a-days raise a laugh even in a Board School, should be gravely offered for the credence of our hard-headed colonial cousins."

I must again insist on the point at issue. If 'Burke' made no profession to be other than a "gorgeous repertory of genealogical mythology," as Mr. Chester Waters termed it,<sup>2</sup> its stories would not matter. But, even as Professor Freeman observed of Sir Bernard Burke, so his successors also have persistently made for it the claim that it keeps pace with the "latest results of genealogical

<sup>1</sup> *The Genealogist* (1896) XII, 66.

<sup>2</sup> *Parish Registers in England*.

research and discovery,"<sup>1</sup> while steadfastly continuing to repeat exploded fictions. That is the grievance, that is the complaint of the historian and the truthful genealogist.

This year (1909), for the first time, there is a change of note. The editor, who had previously defied criticism by proclaiming his work "authoritative," now professes to welcome criticism as a fellow-fighter for truth. This curious passage deserves quoting in full,—

The editor rejoices in the freedom of the comments and in the genealogical interest the summaries of pedigrees excite. He takes his place by the side of the critics in the fight for truth, though he may not always or altogether agree with the tactics of his comrades. The passion of disbelief, which has been well said to be characteristic of modern scientific criticism, has done much to clear the air of myths and to expose many an oft repeated error. It has, however, when tearing to shreds old family traditions and picturesque legends of the past, done little to preserve the truth which lies hid in most of them, concealed by the exaggerations of our forefathers. It would be more helpful to genealogists if modern scientific methods were applied with a constructive object rather than devoted to the barren triumph of destructive theories.

If we may accept the opening words, it is gratifying to know that these volumes should add to the editor's rejoicings. But, from the latter part of the passage, it is greatly to be feared that he views with no small irritation the "barren triumph" of mere truth. That he stands, therefore, "by the

<sup>1</sup> See Vol. II, pp. 47-8 of this work. *The Landed Gentry* (Ed. 1906) similarly speaks, in its Preface, of "the very careful revision necessitated by the more precise and critical methods of modern research."

side of the critics" and even claims them as "his comrades" is a boast which to students of his work has a somewhat hollow sound.

The truthful genealogist is always glad to establish an ancient pedigree; but, when destroying "monstrous fictions" (as Mr. Freeman terms them), he cannot preserve the truth which they do not contain. Nor can he consent to repeat them with the convenient formula "It is stated," in order to leave their truth an open question for his readers.

Of fictions to which the name of 'Burke' continues to impart authority these volumes contain instances enough and to spare.

The paper on 'The *Geste* of John de Courcy' is intended to illustrate the connexion between family history, general history, and mediæval literature. It is proposed to show, not only that John's adventurous career became the subject of a *Geste* or historical romance, but also that it is possible to recover a fragment of a lost *Geste* of Randolph, earl of Chester, which is alluded to by a well-known line in *Piers Plowman*. It is of psychological, as well as literary, interest to study the attribution, in the Middle Ages, of mythical achievements and adventures to real historical personages, and the ready acceptance of these tales, not as fiction, but as fact.

The article on 'Heraldry and the Gent' has three objects in view. Of these the first is to expose the new and absurd pretension that a grant of arms is a "privilege," the claim that it converts the grantee from a "plebeian" into a "noble,"

and the assurance that it is a favour from the Crown similar to the grant of a peerage. The second is to vindicate the value of medieval heraldry, a part of the life of its time, as worthy of serious study and constituting a true branch of archæological science, and, at the same time, to deny the claim, made for the so-called armory of to-day, that it possesses for the student an equal or even a greater interest.<sup>1</sup> It is not easy to understand how any intelligent being can profess interest in the arms supplied, as a matter of routine and *à prix fixe*, to 'Brown, Jones and Robinson,' or can care two straws if they have taken out a grant or not. To the author of *Armorial Families* we may leave such matters as these. But when he entitles his latest work *A complete Guide to Heraldry*, it becomes the concern of those who have made heraldry their study. The third object, therefore, in view is to examine the right of this book to bear the above title and the claim that it is written "with a fulness of knowledge which it is hoped will render the work a *standard* one in time to come".<sup>2</sup> Its author would, doubtless, be the last to complain of such examination, for he himself praises, at the outset, "that critical desire for accuracy which, fortunately, seems to have been the keynote of research during the nineteenth century," and warns us "that the handbooks of Armory professing to

<sup>1</sup> It is significant of the knowledge and of the standpoint of the author that, in *The Right to bear arms*, 'X' speaks of "the time of the Tudors when heraldry was about at its highest point in England" (2nd Ed., p. 229), though even Boutell admits "the degenerate" condition of Heraldry under the second Tudor Sovereign, while Mr. A. S. Ellis dismisses Tudor heraldry as "mostly rubbish"

<sup>2</sup> See the Prospectus of that work.

detail the laws of the science have not always been written by those having complete knowledge of their subject."

The whole of the papers in these volumes, as originally planned, were new ; but the present constitutional crisis has led to the inclusion, at the last moment, of an article on 'The Origin of the House of Lords,' which was published in the pages of a magazine a quarter of a century ago (1884-5). As it is here given in the form in which it originally appeared, there will be found no reference to the subsequent researches of scholars. It is hoped, however, that, even now, it may not be devoid of value as an argument for that feudal origin of the House which, in view of the teaching of Stubbs and Freeman, it was, at the time of its appearance, practically heresy to assert. I may venture, perhaps, to point out that the importance it assigns to the Norman Conquest and its effect upon our institutions is exactly parallel to that which I have traced in the introduction of military tenure (knight-service) into this country. My theory on the latter problem is now accepted by scholars, although involving a reaction no less complete and decisive from the teaching of the older school.

As this paper was not written in view of present controversies, it is necessary to warn the reader that, in speaking of the Crown's control over the writ of summons, I use the phrase in its exact meaning, and am not referring to such modern innovations in our historical constitution as 'the cabinet,' 'the inner cabinet,' or 'the Prime Minister', or to any possible claim of such body or

person to usurp, in this respect, the prerogative of the Crown.

Of those who have been good enough to render me assistance I would specially mention Mr. W. H. Stevenson, to whom I am indebted for the valuable report on the spurious 'Carington' narrative, Sir Alfred Scott-Gatty, Garter King of Arms, for kindly providing me with a copy of the Delawarr document and enabling me to solve the mystery of the Bertie arms, Mr. Oswald Barron, F.S.A., and Mr. H. J. Ellis of the British Museum. Before his lamented death, while this work was passing through the press, the late General Wrottesley placed freely at my disposal his unsurpassed knowledge of Staffordshire genealogy.

J. H. ROUND.

# THE WILLOUGHBY D'ERESBY CASE AND THE RISE OF THE BERTIES

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*Richard Bertie's claim jure uxoris.—Its result fatal to tenure of dignities 'by the curtesy.'—Richard Bertie's origin and arms.—The spurious Bertie pedigree.—Rapid rise of the house.—The Great Chamberlainship.—The Burrels.*

When that dashing adventurer Redmond Barry had attained the aim of his ambition by his marriage to a great heiress, the widowed Countess of Lyndon, he set his heart, Thackeray tells us, on becoming a peer himself. He “got from the English and Irish heralds a description and detailed pedigree of the Barony of Barryogue,” boasted of “the genealogy of the family up to King Brian Boru, or Barry, most handsomely designed on paper,” and began to practise his signature as a peer. But he had over-reached himself at last. His pedigree and his pretensions were jeered at; horrid things were being said about his humble origin; and he confessed that “the striving after this peerage” proved a most unlucky business. I would not compare with Redmond Barry that accomplished scholar, Richard Bertie; but his experience, in this respect, presents a curious parallel. When he had made his astounding marriage to the widowed Duchess of Suffolk,—who, like Lady Lyndon, was a peeress in her own

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right, the heiress of a great family, and a blue-stocking to boot—he wanted further to be recognised, in right of his wife, as the holder of that ancient feudal title, Lord Willoughby d'Eresby. But for this unlucky and unsatisfied desire the real origin of Richard might have remained unknown. It seems indeed to have done so till the present moment. It can now, however, be shown, from a letter of his own writing, that, in spite of a wondrous pedigree which opportunely made its appearance, a leader of the old nobility denounced him as “no gentleman” (*i.e.* by birth), while his wife, though urging his claim to the title, was forced to admit that he was “meanly born.”

The claim advanced by Bertie—himself a limb of the law—is one of considerable interest and importance to students of our peerage law. It raised the whole question of peerage *jure uxoris*, a subject on which much has been said, but very little determined.<sup>1</sup> Although the practice of summoning *jure uxoris* “has now become obsolete,” in the words of our latest authority,<sup>2</sup> Mr. Hargrave<sup>3</sup> doubted whether “this great question had ever formally received the judgment of the House of Lords.”<sup>4</sup> As a matter of fact it was revived,

<sup>1</sup> See for instance “Observations on Dignities” in Courthope’s *Historic Peerage*, pp. xxxvii-xxxix; Stubbs’ *Const. Hist.* (1878), III, 438; Cruise’s *Dignities* (1823) pp. 105-108; Pike’s *Constitutional History of the House of Lords* (1894) pp. 103-107; Palmer’s *Peerage Law in England* (1907) Chapter IX pp. 133-6; *Complete Peerage* I, 392; VI, 292. [The former of these passages cites in full the important “Catalogue of such noble persons as have had summons to Parliament in right of their wives” from p. 576 of Dugdale’s *Summons of the nobility* (1685)].

<sup>2</sup> Palmer, *op. cit.*, p. 136.

<sup>3</sup> Cited by Cruise, *op. cit.*, p. 108.

<sup>4</sup> The whole note to Coke upon Littleton from which this was taken was quoted by Sir Robert Finlay in the Earldom of Norfolk case.



and became of practical importance, so recently as 1901-3, when, in the Fauconberg case, the claimants alleged in their printed case (p. 4.) that William Nevill was summoned to Parliament and sat as Lord Fauconberg *jure uxoris*, which they put forward as Proposition XII (p. 12), and further claimed by Proposition XIII, "to prove that in former times, when the husband of a Peeress in her own right was summoned to Parliament by the title and designation of the Peerage vested in his wife, he actually sat in and enjoyed the same Peerage which was vested in his wife, and that no new Peerage was created" (pp. 12-13).

As I have special knowledge of the Fauconberg claim and its result, I may explain that the claimants' object was to use the writs of summons in 33 and 38 Hen. VI to William Nevill with the style "de Fauconberge" added to his name, as proof that an hereditary Barony was vested in his wife, the heiress of the Fauconberg family. As a matter of fact, to anticipate somewhat, it seems to have been the avowed object of Richard Bertie's claim to a summons *jure uxoris* that it would have established his wife's right to the Barony held by her ancestors.

In an even later and historic case, that of the Earldom of Norfolk (1906), the same question was the subject of almost acrimonious dispute. The petitioner sought, as in the Fauconberg case, to prove that a title was inherited by and vested in an heiress by the fact that her husband bore it, contending that he must have done so *jure uxoris*, a proposition which was rejected, on behalf of the

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Duke of Norfolk, by Mr. Warmington K.C.,<sup>1</sup> and Lord Robert Cecil K.C.,<sup>2</sup> but vigorously upheld, on that of the petitioner, by Sir Robert Finlay ;<sup>3</sup> the Law Lords, in both cases, interposing observations. Sir Robert claimed that the point was "of importance" in the case, that "over and over again the question of sitting *jure uxoris* comes into question," and that "it very much bears upon the title of Earldoms and the calling out of abeyance."

Sir F. Palmer, dealing with "Curtesy and *jure uxoris*," observes (p. 134), that in this case "it was argued that there was no such thing known to the law as the husband of a Peeress being summoned *jure uxoris* ;" but he only cites Mr. Warmington's remarks. I shall deal with the subject elsewhere in fuller detail.<sup>4</sup>

It is impossible here to discuss exhaustively the questions of the right to such summons or of the nature of such summons or of what estate in a dignity was vested in him who received it. Historians will attach peculiar weight to the view of that cautious and sagacious writer, Dr. Stubbs, who held<sup>5</sup> that—

The older Baronies descended to heiresses who, although they could not take their place in the assembly of the estates, conveyed to their husbands *a presumptive right to receive a summons*.<sup>6</sup> Of the countless examples of this practice, which applied anciently to the earldoms also, etc. etc. . . . . and although *some royal act of summons, or*

<sup>1</sup> *Speeches of Counsel*, pp. 97-8.

<sup>2</sup> *Ibid.* p. 145.

<sup>3</sup> *Ibid.* pp. 146-151.

<sup>4</sup> See the paper on "The muddle of the law."

<sup>5</sup> *Op. cit.*

<sup>6</sup> The italics are mine.

creation or both was necessary to complete their status,<sup>1</sup> the usage was not materially broken down until the system of creation with limitation to heirs male was established.

Nicolas<sup>2</sup> boldly derived the practice from the territorial nature of early dignities, and claimed that—

At a very early period the same law (*sic*) was applied to Baronies by Writ that pertained more especially to Earldoms and Baronies by tenure, and the husbands of heirs female are summoned *jure uxoris*, when, *having issue by their said wives*, they had obtained that interest in law in the wife's inheritance which was considered to entitle them to such summons; the practice, however, clearly partook more of the nature of barony by tenure, and was not in accordance with the personal dignity of a Barony by Writ.

This is a consistent and intelligible theory, and Nicolas was thus able to explain the discontinuance of the practice, holding that, from the time of Elizabeth,

a courtesy in dignities, proceeding as it did out of the law of feudal tenure, may be said, like the law of baronies by tenure, to have altogether become obsolete.

He was careful however, to explain that the practice applied only to tenants by the courtesy, and that though "the cases are numerous where summonses are issued where no issue existed," yet

in all such instances a new dignity, *entirely personal*, must be considered to have been conferred on the husband who,<sup>3</sup> whether he had or had not issue by his

<sup>1</sup> The italics are mine.

<sup>2</sup> In Courthope's version (*Historic Peerage*).

<sup>3</sup> Nicolas explained away the cases in which husbands so summoned were allowed the precedence of their wives' baronies as due to "the Crown exerting a prerogative it then possessed of giving an unwonted precedency."

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wife, still occupied in right of her possessions such a position as would entitle him to receive from the Crown a writ to sit in the upper House of Parliament.

It cannot be said that "the Lords' Reports" discuss the question at all adequately; but they do discuss the two cases on which, in 1901, the Fauconberg claimants specially relied,<sup>1</sup> namely the patents dealing with the barony of Dacre, in the reigns of Henry VI and of James I. And their observations depreciate them both. Of the former we read<sup>2</sup> that

This grant to Richard Fenys (*sic*) gives nothing to his heirs, and was probably intended only to allow him the dignity during his life. The patent also does not express that he was entitled to the dignity by the Courtesy of England, or even state directly that he was entitled to it in right of his wife,.....

Independent of these letters patent he could have had no right to the dignity of Lord Dacre, unless by his marriage with the heiress of the preceding Lord Dacre he was entitled as her husband to be a peer of the realm during her life, and after her death to be tenant by the courtesy of the dignity having issue by her; *a right which the committee have not found anywhere distinctly recognised*,<sup>3</sup> though several persons have been at different times summoned to Parliament by writ, or created by patent peers of the realm, by a name or title properly belonging to their respective wives as the law is now settled.

The many extraordinary proceedings respecting the peerage during the reign of Henry VI. take much from the authority of this acknowledgment of the right of Sir Richard Fynes. Some attention, however, seems to have

<sup>1</sup> *Printed Case*, pp. 12-13; *Minutes of Evidence* (1903), pp. 53-4, where these constitute the evidence vouched for their 'Proposition XIII.'

<sup>2</sup> Third Report (Ed. 1829), p. 213.

<sup>3</sup> The italics are mine.

been paid to it in the reign of James the First, as after stated, though in prior cases *it seems to have been considered as settled law that a right of peerage, descended to a female, gave no right to her husband, whether she had issue by him or not.*<sup>1</sup>

The second case is thus dismissed :—<sup>2</sup>

The matter recited in this grant of James the First may, perhaps, be considered as one of the extraordinary proceedings concerning the peerage which took place in his reign. The tenancy by the curtesy claimed by Lennard seems not to have been admitted as a right ; but it appears that a writ of summons to Parliament would have been granted to him as a measure of justice, *flowing nevertheless from the favour of the Crown,*<sup>3</sup> if that justice or favour had been done in the lifetime of his wife. As a matter of justice, it could not have been defeated by the death of his wife ; as a matter of favour, the King could not have granted the dignity to him in prejudice of the rights of his son.

This leads us to Richard Bertie's claim to the Barony of Willoughby, or as he put it, to be Lord Willoughby "of Willoughby and Eresby"—for it seems to have been supposed that two Baronies were involved.

The treatment of this claim has been very unsatisfactory. It appears to be ignored in the *Complete Peerage*, in the *Lords' Reports on the Dignity of a Peer*, and in Mr. Pike's discussion on *jure uxoris* and "the curtesy,"<sup>4</sup> while in the two distinctively legal works, those of Cruise and of Sir F. Palmer, it is most inaccurately described. According to the former :—

<sup>1</sup> The italics are mine.

<sup>2</sup> *Ibid.* p. 218.

<sup>3</sup> The italics are mine.

<sup>4</sup> *Op. cit.*, p. 107.

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“About the year 1580, Richard Bertie claimed the Barony of Willoughby in right of his wife Catherine, duchess of Suffolk, and Baroness Willoughby, as tenant by the curtesy.

The claim was referred by Queen Elizabeth to Lord Burghley and two other Commissioners ; as also a claim to the same dignity by Peregrine Bertie, the son of the claimant.

The commissioners made their report in favour of the son, who was accordingly admitted to the dignity, in the lifetime of his father.”<sup>1</sup>

Bertie, on the contrary, was urging his claim early in 1570 (when his son was only fourteen) ; it came before the commissioners in the summer of 1572, and, so far from being opposed by his son, was avowedly made to protect his son's right.

Sir F. Palmer similarly writes :—

“Fifty years later, however, in 1580, Richard Bertie, who had married Catherine, Duchess of Suffolk and Baroness Willoughby, and had issue by her, claimed the Barony of Willoughby as tenant by the curtesy in right of his wife..... the claim was referred by Elizabeth to Lord Burghley and to other Commissioners, together with the claim for the same dignity made by Peregrine Bertie, the son of the claimant ; and the Commissioners made their report in favour of the son, who was accordingly admitted to the dignity in the lifetime of his father.”<sup>2</sup>

Instead of Richard Bertie's claim being “fifty years later” than that of Mr. Wymbish,<sup>3</sup> there were at most thirty years between the two. The rest of the learned Counsel's statement is virtually identical with that of Cruise more than eighty years ago.

<sup>1</sup> *Dignities or Titles of honour*, pp. 107-8.

<sup>2</sup> *Op. cit.*, p. 135 ; also p. 10.

<sup>3</sup> See below for this case.

The explanation is that both writers had admittedly relied on Collins, in whose work <sup>1</sup> the proceedings (pp. 1-12) belonging to 1572 (but there undated) are insufficiently distinguished from those of 1580 (p. 23).

The papers thrown together in book form by Collins have been somewhat too freely cited, useful though they are. For they have, from a legal standpoint, no real authority. The narrative of the two Bertie claims (1572 and 1580) was taken by him from a MS. belonging to Anstis' Library, and will be found in at least two British Museum MSS. (Harl. MS. 6141; Lans. MS. 861), while a third (Lans. MS. 29) contains an abstract of Richard Bertie's arguments. But Lans. MS. 861 is of special value as containing notes in the margin, written by another hand, of the arguments employed against his claim. From these it appears that while the claimant took his stand on law and his right alone, the Crown wanted to treat any recognition of his claim as an act of "special grace and favour." One cannot but admire his sturdy stand against such a sovereign as Elizabeth and his contention, in a letter to Cecil, that "Livery is a kind of grace, yet such as by law the Prince is bound to yield to the subject."

The Crown, on the contrary, was straining its prerogative in high Tudor fashion and even endeavouring to assert that the admission of the right of an heiress to succeed to her father's Barony would be an act of special grace and favour. Indeed there emerges, in the course of these proceedings,

<sup>1</sup> *Proceedings, Precedents, &c.* (1734).

a story that Henry VIII. had insisted that he would make his own Barons, and would not have them made by women (i.e. through a female heir).<sup>1</sup> One is reminded of Elizabeth's royal wrath when the Emperor made Thomas Arundel, a subject of hers, into a Count.

There were really two questions at issue in Richard Bertie's claim, though the two were much confused in peerage proceedings at the time. The first of these was whether an heiress inherited as of right, and transmitted to her heirs, a Barony in fee; the second was whether, in case she did, her husband was entitled to the barony, or at least to the style thereof, in her right.

Of these questions the former, it is held, was not formally set at rest till the Clifton case was decided long afterwards (1674),<sup>2</sup> if, indeed, all doubts were dispelled even then. In the Willoughby case Bertie urged, as to this first question, that precedent was all in his favour and that law was not against him. By precedent I mean more especially a decision, quite unknown (it would seem) to writers on the peerage, in favour of his wife, as her father's daughter, as against her father's younger brother, the heir male, after Lord Willoughby's death in

<sup>1</sup> This ground was actually taken by Serjeant Rolle in his argument against the heir-general in the Grey de Ruthyn case (29 Dec. 1640). After urging the King's prerogative in the matter "by his royal power only, not restrained by law, nor infringed by custom," he proceeds, "this power must be taken from him, and rest now wholly in the disposition of a woman, who, many times led by affection, makes her choice, without judgement or discretion, of a mean man, no gentleman, and it may be one whom the King favoureth not, and yet the issue of such a one must be a baron and peer of the realm; if this maxim is true,—and that without the King's permission or approbation, for it is descended upon him in fee,—how much this derogateth from the King's princely prerogative and absolute power, let the indifferent judge" (Collins, p. 222).

<sup>2</sup> But see, as to this case, the paper on 'The muddle of the law' in this work.



1525.<sup>1</sup> By Bertie's view of the law I mean that he based his claim "on the customs of chivalry used within this realm," and vehemently denied that his case should be decided by the civil law, denouncing the "gross-head civilians," who "held that women are incapable of barronys, and all higher dignities in their own right: therefore their husbands nor children cannot claim from them that right which they have not" (themselves).<sup>2</sup> It must be remembered that there was then a belief (as I shall elsewhere show) that a knowledge of the civil law was requisite for the decision of peerage cases.

In the view of Bertie and his wife her right to her father's Barony was not only involved in the other issue—his claim to bear the title in her right,—but was actually the cause of his claim being made. If, as he alleged, her right had been established against her uncle's claim, and if, as he further alleged, that uncle's son, when he was raised to the peerage (1547), was refused the title of Willoughby of Eresby, and assigned that of "Willoughby of Parham," it is difficult to see how they could profess that her right to the title was in danger unless he were allowed to bear it. The Duchess, however, did undoubtedly urge that this was the case. She wrote to Cecil (29 July

<sup>1</sup> This decision was alleged by Bertie in 1572 (Collins, p. 4) and again in the Dacre case, with the addition of the words "by the Lord Cardinal" after "the claim being heard" (Ib. p. 38). It had meanwhile been referred to by Bertie's son, Peregrine, when claiming on his mother's death (1580). He urged that "the question was handled in King Henry the Eighth's reign; and the right, upon claim made by Sir Christopher Willoughby, younger brother and heir male to the Lord Willoughby, my grand-father, was adjudged to the Duchess, my dear mother."

<sup>2</sup> Collins, pp. 5, 6, 8.

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1570) that what grieved her most was the future risk to her son's right.

For it was told her to her face within this month that her barony was gone from her and her heirs to the lately created Lord Willoughby (but she puts her trust in God, though friends fail her, that she shall not for ever be bared, by envy, of her right). It is to God to rule all, and by His good means (those) as meanly born as her husband have been advanced by prince's gifts to greater honour than they (i. e. she and her husband) challenge as their due. They have been kept from it now these eighteen years,<sup>1</sup> the first six years by her own default, for otherwise she might with greater offers have had it.<sup>2</sup>

A week later she wrote again that

of her husband she hears nothing of her Majesty's determination, but of Cecil's good report and loving mind to do him good. As little as her Majesty sets by them, they may comfort themselves, etc..... It is true that to her knowledge neither Lord Willoughby hath sought to do anything against her, neither hath anything passed against her that way since her Majesty's reign. "But this I know, that there is good account made that, when I die, my children shall lose it. And these words have passed plentifully; and as I wrote, had them spoken to my face the last day; and therefore I will think if I find no more favour in my lifetime, it is very like their words will prove true after my death..... And yet I cannot but show my natural desire to have my children succeed me, which desire I think is in every honest body. And if my husband might take his place, then should my right be well-known to the world" etc. etc.<sup>3</sup>

Nearly two years, however, elapsed before her

<sup>1</sup> i.e. since their marriage.

<sup>2</sup> Lord Salisbury's MSS., I, 478.

<sup>3</sup> To this letter Bertie appended a postscript asserting that "the right is such that it cannot be impugned" and speaking of a possible "dislike" of himself (*Ib.* I, 480).

husband could secure a hearing for his claim. In an important letter to Cecil (now Lord Burghley), he writes (14 April 1572) :—<sup>1</sup>

I send to your Lordship by this bearer my servant (1) the bill for confirmation, having used therein the advice of Mr. Attorney General. I send also (2) a collection of such as have in the right of their wives enjoyed titles of honour ; though you required but a few names, yet I send many ;..... And, to prove the use of it in the Barony of Willoughby, I send (3) two Court Rolls where you shall find it in the title etc.

Bertie had referred to a "bill" in a long previous letter (1 Sept. 1570),<sup>2</sup> and I suspect that in the later of these documents we may recognise the draft "decree for Mr. Bertie to be Lord Willoughby and Eresby," which is found among Burghley's papers.<sup>3</sup>

The second of the items mentioned can be identified at once in Collins' book, where we find (p. 2) "the names of certain persons that in right of their wives have enjoyed the title and dignity of barons, and by that right have been called to Parliament as barons in every King's government since the Conquest" [!] This list is officially subscribed by those two eminent rascals.<sup>4</sup> "Gilbert Dethick *als.* Garter the principal King of Armes; Robert Cooke *als.* Clarencieux Roy d'armes." Their first precedent was that

John Talbot, a Norman, came into England with

<sup>1</sup> *State Papers : Domestic.* Vol. LXXXVI, n° 8.

<sup>2</sup> In it he says he is sending therewith "a copy of a bill penned by Mr. Carrel, to manifest the Queen's consent, because the right had so long slept." (Lord Salisbury's MSS. I. 482.)

<sup>3</sup> Lans, MS. 29, no. 79.

<sup>4</sup> See the paper on "Peerage cases in the Court of Chivalry" *ad finem*.

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William the Conqueror and married Matilda daughter of Richard, Lord Talbot of Longhope, in whose right the sayde John was Lord Talbot of Longhope. Of whom the Erle of Shrewsbury is descended.

Now Domesday book proves that, in the time of the Conqueror, Longhope belonged to William the son of Baderon. It descended to his heirs, the Lords of Monmouth, till their extinction in the male line; and it was not until some two centuries after the Norman Conquest that it passed into the hands of a Talbot ! Let us now take the third precedent, assigned to the reign of Henry I.

Josselyne, son and heir to the duke of Brabant, married Agnes daughter and heir to William Lord Percy, in whose right he was Lord Percy, of whom descends the earl of Northumberland.

Jocelin belongs not to the reign of King Henry I., but to that of his grandson, Henry II. ; he was not "son and heir to the Duke of Brabant," and he was never "Lord Percy." Yet all these precious "precedents" were subsequently dished up anew for the claim to the barony of Dacre.<sup>1</sup>

It is well that such "heralds' books" have long ceased to be produced as evidence in claims to peerage.

Collins' book is full of such precedents similarly supplied, no doubt, by the heralds for the guidance of those who were deciding claims to peerage ; and what strikes one most about these precedents is the absolute incapacity of those who supplied them to distinguish between the territorial baronies of Norman times and the parliamentary dignity of

<sup>1</sup> Collins, pp. 35-7.

a peer of the realm. Take, for instance, the Abergavenny case, in which were adduced—

Examples chosen out of an infinite number of such as, after the decease of a baron or peer of this realm without issue male, in the right of their wives, mothers or grandmothers, having been the sole daughters or the sole daughters and coheirs to the said baron, have enjoyed the name, stile, title, and dignity of the said barony, according to the most ancient usage and laudable custom of England, in the times of every King's government since the Conquest.<sup>1</sup>

This precious list begins with “Wygod baron of Wallingford in com. Oxon in the time of King Harold and William the Conqueror.” I have among my pictures an oil painting of the delivery of St. Peter from prison. In the background are seen St. Peter and the angel ; in the foreground are soldiers gambling, attired in the uniforms and accoutrements of the 17th century. Its anachronisms are not worse than those of these amazing precedents derived from Norman times.

So much for that “collection of such as have in the right of their wives enjoyed titles of honour,” which Bertie, we have seen, despatched to Burghley, in April, 1572. There were, as I have said, involved in his claim two distinct questions ; and these were ultimately decided in absolutely contrary ways. The right of an heiress to inherit a barony, and to transmit it to her heirs, was eventually admitted as beyond dispute. But the claim of her husband to hold her title and be summoned to Parliament in her right became obsolescent, and has

<sup>1</sup> *Op. cit.* p. 83.

so completely disappeared that its very existence in former times has been doubted.

The special interest of Bertie's claim is that it occurred at a transition period when lawyers were in great perplexity as to how far it was valid, and that the writ of summons to his son (in his own lifetime) on his mother's death (1580) was, in this, an epoch-marking event, being absolutely fatal to the view that a barony could be held by "the curtesy of England."

The lawyers' perplexity is seen in the report on Bertie's claim by the Attorney General and Solicitor General,<sup>1</sup> to whom Burghley had referred it :—

We have conferred with four of the judges that be now in London concerning Mr. Bertie's case, and they be all of opinion that he cannot challenge to have the Barony and the Title thereof in right of his wife, or else as tenant by the courtesy after her decease. We did make doubt whether her Majesty might declare him Lord of the name and title of the Barony during his life only, and then to call him by Writ according to that declaration, and that they thought her Majesty might not do. But because the course is very rare, they desired to have conference with the rest of the judges, when they shall come to town, etc.

Eleven days later the Attorney General (Gerrard) alone writes to Burghley :—

I have sent to your Lordship here enclosed the book. Mr. Bertie's title, I think is very orderly to declare him to bear the title and name of the Barony, but only during his life, and then to remain to the heirs of the Duchess, where of right it ought to go. And if this declaration

<sup>1</sup> 22 April 1572. *State Papers : Domestic*, Vol. LXXXVI, no. 19.

<sup>2</sup> *Ibid.* no. 34.

shall first pass from her Majesty, and then the Writ follow, I think surely it will be very plain that there can be no further title in the Barony but only during his life. But as to the question, it is moved whether this calling of the father should be any wrong to the son after the decease of the Duchess his mother, if the father do outlive. As to that I must needs confess it seemeth to be some wrong to the son, if he could claim that title during his father's life (as indeed it is most like he could never do), for although it seemeth to be some wrong, yet surely there is no damage, or loss can thereby grow to him. For it is certain that the father shall have the lands during his life, and the son nothing but what his father will be contented to give him. And therefore it is not like the son could claim the title during his father's life, etc.

This letter betrays the difficulty that lawyers were feeling as to the exclusion of the son and heir from the title in the event of the husband surviving his wife and continuing to hold that title by "the curtesy of England."

Bertie himself wrote a fortnight later to Burghley :—<sup>1</sup>

..... I meant to communicate with you how the Queen's Majesty is well pleased at the motion of my Lord of Leicester that my cause should be heard, which I desire for that she is so diversely informed, and not thereby to make any claim otherwise than may stand with her Majesty's good pleasure. Only I wish competent judges, and specially your Lordship for one, for that it lieth not in the knowledge of the common law, as appeareth by a precedent in the time of Henries the 4th and 5th, when the Lord Grey of Ruthen claimed the stile and arms of Lord Hastings, claiming as heir male etc. etc.

Bertie's meaning is here somewhat obscure. His

<sup>1</sup> Letter of 16 May 1572 (*Ibid.* no. 37.)

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argument before the Commissioners, as given in "Collins," was specially directed against the *civil* law and its alleged exclusion of women from inheritance of honours, and he there adduces the contest for the arms and style of Lord Hastings as an instance of judgment for the heir-general against the heir-male.<sup>1</sup> (pp. 8-9) What he avowedly based his claim on was "the ancient and laudable custom of this realm"..... "the customs of chivalry used within this realm." <sup>2</sup>

Here we may break off for a moment to consider the draft decree for recognition of his right, which is found among Burghley's papers,<sup>3</sup> and which may possibly be that to which the Attorney-General refers in his letter above. It will be found that it carefully limits the admission of his right, and further, makes it the effect of the Queen's "pleasure and will." It also, somewhat strangely, makes his case a precedent for all similar ones arising in the future.

"DECREE FOR MR. BERTIE TO BE LORD WILLOUGHBY OF WILLOUGHBY AND ERESBYE."

"Wee A. B. C. D. Commyssioners appointed by the Quenes Majesties owne mouth to heare and determine the clayme made by Richard B. Esquier to the name and stile of the L. Willughby of Willughby and Eresby as in the right of the Lady Katerine Duchess of Suffolk his wiefe daughter and heyre to Wm. late Lord Willughby

<sup>1</sup> In his letter he reverses the position, for Lord Grey de Ruthyn claimed through a female; his opponent was the heir male. Moreover what was decided there (a decision upset by the House of Lords under Charles I) was that the heir of a sister of the *whole* blood had a better claim than the heir of a brother of the *half* blood.

<sup>2</sup> Collins, pp. 1, 5.

<sup>3</sup> Lans. MS. 29, no. 75.



of Willughby and Eresby deceased "..... (reciting *user* of the title by Richard Welles and Richard Hastings)..... have reported the evidence to the Queen, "and upon her pleasure and will in that behalfe revealed unto us doe pronounce, order and decree that the said Richard Bertie may lawfully use the name and stile of Ld. Willughby of Willughby and Eresby with all the rights thereunto belonging in the right of the said Ladye Katherine his wief during her lief natural and likewise after her decease if he survive so long as any issue of ther two bodies lawfully begotten being right heire to the said title and Baronie shall also live, provided alwaies that the sayd Richard Bertie shall not clayme by reason of any writt of summons to him directed to apere in parlement, any furer or larger estate in the sayd name and stile than before is expressed. And that by the Quenes majesties exprest commandment his order from henceforth is to take place in all like cases. "

The precedents on which the claimant relied as proving, by custom, his right to bear the title were (as explained in his letter to Burghley), firstly, those taken from the history of other baronies ; secondly, those taken from that of the Willoughby barony itself. These latter, on which special stress was laid (we have seen) in the above draft and in Bertie's argument before the Commissioners,<sup>1</sup> were:

(1) that on the death of Robert Lord Willoughby (25 July 1452), the title was immediately *used* by Richard Welles, who had married his only child Joan.

(2) that immediately on the death of the above Richard the title was *used* by Richard Hastings who had married their heiress, Joan. His object

<sup>1</sup> Collins, pp. 4, 5.

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was to disprove the Crown's contention that its action, in the form of a writ of summons, was necessary, before the title could be rightly assumed.<sup>1</sup>

The weakness of his case was that it rested on evidence of *user* only. For the fact that a man is assigned a title on the court-rolls of his own manors can be no evidence of his right to bear it. In the case of Richard Welles, he was undoubtedly summoned to Parliament as "dominus Willoughby" 26 May 1455, and appears to have been already sitting under that title in 1454, though his name is not found among the summonses to that Parliament (20 Jan 1452/3). In the case of Richard Hastings, he was never (*pace* Garter) summoned as Lord Willoughby, but only as Lord Welles, though he styled himself by preference, Lord Willoughby. To me this appears to imply that the Crown declined to recognise his assumption of that title.

Bertie then weakened his case by arguing that

if Richard Welles and Richard Hastings had been by writ created, then should the dignity have descended to the heirs of Welles and Hastings, and not have reverted to the house of Willoughby, neither could Christopher Willoughby, the grandfather, nor William Lord Willoughby the father, to the Duchess, have used as they did (and may be proved by evidence and matter of record) the style of Lord Willoughby before they were called by writ to Parliament.

Moreover it is plain that the said Richard Welles, Richard Hastings, Christopher, Lord Willoughby, and William, Lord Willoughby, were not created by writ,

<sup>1</sup> Garter, it appears, told the Commissioners "that he thought both Welles and Hastings used the style of Lord Willoughby, but not in right of their wives, but rather as being called by writ to Parliament." (*Ibid.*)

because they took their places after the antiquity of the baronies of Willoughby and Eresby.<sup>1</sup>

In the first place there were no "heirs" of the body of the two Richards in 1505, to inherit under their writs. And in the second neither Richard Hastings nor Christopher Willoughby ever received writs as Lord Willoughby, and the latter is recognised as a usurper, who wrongfully assumed the title.<sup>2</sup> His son William became heir to it in 1505, and was summoned as Lord Willoughby in 1509 (17 Oct.).

Apart from the question of attainder and its effect, which I have here left aside, the succession of William Willoughby to the barony, after the death of his cousin Joan in 1505, is the subject of a strange and serious error in "the Lords' Reports on the Dignity of a Peer." It is there<sup>3</sup> stated (after a discussion on the attainders of the Lords Welles) that

The Dignity of Lord Willoughby, which had been inherited by Richard Welles from his mother, became (sic) in abeyance between William Willoughby, Sir Robert Dymock, and Sir Thomas Lawrence, and the abeyance was determined by the summons of William Willoughby.

In spite of this definite statement, it was the barony of Welles, not of Willoughby,<sup>4</sup> that thus fell into abeyance (according to the modern doc-

<sup>1</sup> *Ibid.* pp. 4-5.

<sup>2</sup> i.e. in his will. As he was never summoned he obviously cannot have taken (as here alleged) his seat with the precedence of the old barony.

<sup>3</sup> Fourth Report (Ed. 1829), p. 295.

<sup>4</sup> Cases of a double heirship being vested in one individual have sometimes led to similar errors. Compare my paper on "the surrender of the Isle of Wight" in *Geneal. Mag.* I. 4-5.

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trine) and this alleged early instance of "determination" of an abeyance thus disappears.

I have now dealt with the two classes of precedents relied on by Bertie to prove his case, as stated by him in his letter of 14 April 1572,<sup>1</sup> together with what appears to be the "bill" of which it speaks. The latest case which the heralds could produce for him of a clear summons *jure uxoris* was that of the Earl of Derby's son and heir, who, having married Lord Strange's daughter and heiress, had been summoned as Lord Strange ninety years before (1482). There was, however, one later (though somewhat doubtful) case, namely that of Sir Charles Somerset, who, having married in 1492 the daughter and heiress of the Earl of Pembroke (Lord Herbert), was himself styled Lord Herbert on a Patent Roll of 1504 and was summoned as a baron by that style in 1509.<sup>2</sup>

Charles Somerset had issue by his wife, but in the next case which arose, that of Mr. Wimbish, there was no such issue. As this case has been loosely dated, by writers on peerage law, as "in the reign of Henry VIII," it may be well to explain that Mr. Wimbish's wife did not inherit from her brother Lord Tailboys till 1542, so that the date can be narrowed down to 1542-1547.

Its facts are known to us only from the recital of them in Richard Bertie's case,<sup>3</sup> but there is no reason to doubt them. King Henry VIII, we read, asked the judges "whether by law Mr. Wimbish

<sup>1</sup> p. 13 above.

<sup>2</sup> A creation by patent in 1506 has been alleged, but cannot be traced.

<sup>3</sup> They were repeated subsequently in the "Dacre of the South" claim.

ought to have the name of Lord Taylboys in the right of his wife or not.”<sup>1</sup> The King eventually ruled “that neither Mr. Wimbish, nor none other from thenceforth should use the style of his wife’s dignity, *but such as by courtesy of England hath also right to her possessions for term of his life.*”<sup>2</sup> This ruling was, naturally, understood to imply that those who, having issue by their wives, would enjoy for their lives their wives’ lands, were entitled to assume their wives’ peerage styles. The reader should observe, however, that this applies only to the user of the peerage style, and does not involve a right to receive a writ of summons.

It was within thirty years of this ruling that Richard Bertie was urging his right to be recognised as Lord Willoughby in right of his wife, by whom he had issue. His case, therefore, was a strong one, and, of the three Commissioners before whom it was argued, Lord Sussex is alleged to have said “that he thought the said Richard Bertie might use the style during the lives of his wife and child” etc.<sup>3</sup> The date of these proceedings can be ascertained from the statement that Bertie was to hear the Queen’s decision on them at Kenilworth, to which she made her famous visit in August 1572.<sup>4</sup> Elizabeth, we read, was gracious,

<sup>1</sup> It is a singular fact (which seems to have escaped notice) that Henry VIII was alleged to have designated on his deathbed, “Sir—Wymbisshe” as one of those who were to be created barons. (*Acts of the Privy Council*, 1547-1550, p. 16).

<sup>2</sup> Collins, 11.

<sup>3</sup> Collins, 12. Lord Sussex’s point is somewhat obscurely expressed, but what he seems to have meant was that he thought Bertie might exclude, for his life, his own son from the title, but not a collateral heir, if the succession should open to such heir.

<sup>4</sup> “The place appointed for attendance of the said Richard Bertie was Theobalds, the Lord Treasurer’s house, for at that time Her Majesty was

but procrastinated after her wont ; and nothing further was done in the matter. It is alleged that Bertie professed himself satisfied, on the ground that his case had been laid before the Queen,<sup>1</sup> but this seems scarcely consistent with his previous eagerness to claim the title for himself.

In any case, on the death of his wife the Duchess eight years later (19 Sept. 1580), the dignity was immediately claimed by their son Peregrine and—his case having been heard by the same three Commissioners and reported on to the Queen—his right was admitted Nov. 11, 1580, and he was summoned as Lord Willoughby two months later (Jan. 7).

Just as the ruling in the Wimbish case had restricted barony *jure uxoris* to those cases in which the husband held by "the courtesy of England," so did this admission and summons deny barony even to those who did so hold by the courtesy. Peregrine's summons in the lifetime of his father, who was tenant for life of the Willoughby *lands*, was thus a turning point in the history of the subject. The acceptance, however, of new developments in peerage law and practice has usually proved reluctant ;<sup>2</sup> and, eight years later, Sir Thomas Fane was claiming the barony of Abergavenny on the same grounds as that of Willoughby

entering into her progress, but the time there served not. Then the said Richard Bertie was referred to Kenilworth Castle, and there, at the day of Her Majesty's removing, the said Richard standing by, the said Commissioners dealt with Her Majesty," &c. (Collins, p. 12).

<sup>1</sup> "Richard Bertie, having proceeded as far as he meant, held himself satisfied, for the cause why he desired hearing of his right and interest was especially to deliver Her Majesty from error, that she, by wrong information, had conceived that there was no such right," &c, &c. (Ibid.).

<sup>2</sup> As, for instance, with the long hesitation as to the doctrine that a writ and sitting constituted an hereditary barony.

had been claimed by Richard Bertie, while even later Sampson Lennard was similarly claiming that of Dacre and obtaining, in the next reign, a quasi-admission of his right.

Apart, however, from the legal question, another objection was raised to Bertie being summoned as Lord Willoughby to the House of Lords. It was urged that—of course in the sense of birth—he was “no gentleman.” We learn this interesting fact for the first time from a letter of his own addressed to his friend Sir William Cecil.

“My Lord of A. (as I am informed, more of his accustomed good nature than of my desert), told the Queen I was no gentleman, which, perhaps being otherwise unwilling, somewhat stayeth, but if that respect had stayed her ancestors in the time of Fitzalan, bailiff of London, my Lord should have lacked his Lordship now to embroil others. As I have no cause, so I am no wit ashamed of my parents, being free English, neither villains nor traitors. And If I would after the manner of the world bring forth old Abbey scrolls for matter of record, I am sure I can reach as far backward as Fitzalan. And if such scrolls be too old, yet I am not a gentleman of the first escutcheon; the arms I give I received from my father, and they are the same which are mentioned in the scroll that he shewed to the heralds, and confirmed (*sic*) by Clarentius, the old man that was in King Henry the Eighth’s time,” Condemns himself for writing “these wayne bubbles.” But because Cecil is desirous to know part of his case, he is desirous that Cecil should know all.”<sup>1</sup>

This letter needs some explanation. It is clear that “my Lord of A.” is the Earl of Arundel,

<sup>1</sup> Letter of 1 Sept. 1570 in Calendar of Lord Salisbury’s MSS. (Historical MSS. Commission), I, 482-3.

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who, both as a Fitzalan and as Earl of Arundel, deemed himself a leading representative of the old nobility, and had even aspired to the hand of the Queen herself. It is also, unfortunately, clear that Bertie was so ignorant as to suppose that the Earl's house was founded by Henry Fitz *Ailwin*, the well-known first mayor of London. He, therefore, retorts that the Earl's ancestor might never have been made a peer if the Crown had hesitated, as in his own case, on the ground of birth.

Jealousy of the new families seems to have been characteristic not only of the Earl of Arundel, but also of his Howard successors. It was Thomas (Howard), Earl of Arundel who, in 1621, when reminded in the House of Lords by the first Lord Spencer that his ancestors had plotted treason, haughtily replied that Spencer's ancestors "were then keeping of sheep." Indeed, when Richard Bertie, in his letter, observed that his parents were not "traitors," he may have intended a dark allusion to the Earl of Arundel's imprisonment, the year before, on suspicion of treason in the matter of the Duke of Norfolk and Mary Queen of Scots. Was it the old jealousy blazing forth anew when the heir of the Earls gave the lie to Richard Bertie's grandson in the House of Lords itself, and retorted to a blow from his staff by hurling an inkhorn in his face? <sup>1</sup> The similar proceedings of

<sup>1</sup> "Upon Saturday in the evening in a Committee in the Lords House the Lord Mowbray [i.e. the Earl of Arundel's son] gave the Earl of Lindsey, Lord High Chamberlain, the lie', whereupon the Earl of Lindsey struck him over the head with his white staff, and the other threw an inkhorn in his face." Letter of July 1641 from John Coke (Report on Coke MSS. II, 289).



our own time in some Continental Parliaments have ancient and distinguished precedent.

The above letter to Cecil, when explained, provides the key to a strange paragraph appended to Bertie's 'case' two years later.<sup>1</sup> Its wording is so vague that its meaning might well be missed ; but with this letter before us, that meaning is at once made clear.

Now resteth only one faint imagination to be answered ; some, without any rule or authority moving them thereunto, require degrees of proceeding in nobility, as in universities observed, being ignorant how some of obscure parentage have leapt at the first step into kingdoms and empires, and that God himself hath said that He, *a sterquilinio*, placed men of base degree with princes. It were injury to vertue and the prince's prerogative, if he might not directly place a worthy man in a worthy vocation. He that winneth the garland by common consent, is worthy to wear it ; if the prince or law enable a man to possess an earldom, why should any cavill at the stile, especially the law and custom freely yielding it, and the examples not rare in England ; as in the earldom of Arundel after the death of William Albinacke, and in the baronies of Bardolphe and Moreley, and divers others of fresh memory ; the same reason prevailing for the layman which serveth for the ecclesiastical person [who is] *no gentleman* otherwise than by virtue, yet by his bishoprick [is] immediately invested with the degree of a baron. And that the degree of knighthood should be first requisite, is a preposterous judgment, sith that it is a dignity which may be added to a marquis or duke. And [it is] therefore most congruable (howsoever it hath been otherwise used) that some sorts of men, [who] before [were] *no gentlemen*, may enjoy rather the dignity of a baron than the martial dignity of knighthood..... The conclusion

<sup>1</sup> It is printed on p. 21 of Collins' *Proceedings* &c.

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therefore followeth that to deny to wise and virtuous men capacity of a noble see, or of a noble dignity lawfully purchased, or cast upon him, is to deny law, custom, reason and nature.<sup>1</sup>

It is clear from Bertie's letter to Cecil that this paragraph is intended as an answer to the personal objection to himself<sup>2</sup> as "no gentleman" [by birth], and therefore unfit to be a peer, and still more so to bear so noble a title as that of Lord Willoughby.<sup>3</sup> He even reverts to his former *tu quoque* as against the Earl of Arundel when he speaks of the devolution of that earldom "after the death of William Albinacke," meaning that it passed with a female to FitzAlan, whom he so strangely supposed to have been of plebeian stock.

Richard Bertie's statements as to his own birth raise the whole question of the origin of his house. It is significant that his wife the Duchess, when writing similarly to Cecil a few weeks before, had frankly admitted that her husband was "meanly born," even when pleading that the Queen might summon him as Lord Willoughby:<sup>4</sup> Bertie himself sets out in manly fashion, but then, after vague allusions to "scrolls," falls back upon his arms. Now these arms, it was true, had been granted to his father, but only twenty years before, when the writer himself was in his thirty-fourth year. The actual grant by Hawley, Clarencieux ("Clarentius")

<sup>1</sup> The italics and the words within parentheses are mine.

<sup>2</sup> Compare his expression in a letter to Cecil: "if there is any dislike of himself."

<sup>3</sup> Compare Serjeant Rolle's argument, p. 10, note 1 above.

<sup>4</sup> "It is to God to rule all, and by His good means [those] as meanly born as her husband have been advanced by prince's gifts to greater honour than they [i.e. she and her husband] challenge as their due." Letter of 29 July 1570. (Lord Salisbury's MSS., I, p. 478).

was made under Edw. VI., 10 July 1550, and is printed in "Five generations of a loyal house" (pp. 448-450) from "Glover's Collect." A. f. 41 in the College of Arms. The blazon is "sylver three faulcys of Mottions the bodys of tymber hedded armed horned asure upon the tymber a ryng of the same two above one."—in other words, three battering rams. It is important to observe that there is here no mention of the triple turreted broken castle, which the Berties have borne quarterly with the battering rams coat, and still more so to note that the grant is explicitly a *new* one—"devysed, ordeyned, gyven, and graunted," and not, as Richard Bertie represents it, a confirmation. This is the more noteworthy because, at this period, in cases where there was any evidence that a family had borne arms, the fact was duly recited. All that Hawley admits of Bertie is that he

"is descended of an house undefamed and beinge at this present tyme Capitayne of Hurst Castell for the Kinges Ma<sup>tie</sup> and hath of long tyme used himself in feates of armes and goode works so that he is well worthy to be..... admitted (sic).<sup>1</sup>

Compare this with the language of the same Hawley in the cases which follow, and note the difference.

#### HAWLEY (CLARENCIEUX)

A. D. 1537. "John Greshame, Mersar... ys descended of a good howse undefamed *berying armes* under the lawse."

<sup>1</sup> *Five Generations of a loyal house*, p. 449.

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A. D. 1541. "John Bolney..... descendid of an olde and ancyent howse undefamed of *long tyme beryng armes.*"

A. D. 1543. "John Wade..... is descended of an antient old house undefamed of *long tyme beareing armes.*"<sup>1</sup>

It will be observed that in Bertie's case Hawley not only pointedly omits speaking of his house as an old one—restricting himself to the negative term "undefamed"—but treats it as never having borne arms and therefore in need of a coat.

This direct evidence at once knocks on the head the attribution to the family for several generations earlier, not only of the coat granted in 1550, but even of the broken castle subsequently quartered with that coat.<sup>2</sup>

We are not told how the broken tower came to be quartered with the coat granted in 1550, and as the matter is a mystery, I have gone into it thoroughly and can now clear it up.

In *Five Generations of a loyal house*, on the page immediately preceding that on which the grant is printed, there is given "the docquet of the Grant, as remaining in the MS. 2 H 5, p. 67 b..... in the College of Arms," certified by Sir Charles Young, then Garter King of Arms. The *blazon* in this docquet is in strict accordance with that in Hawley's Grant;<sup>3</sup> but the *drawing* annexed to the docquet, and there reproduced, is quite at variance with the blazon, for—

<sup>1</sup> *The Ancestor*, N° 8, pp. 126-7.

<sup>2</sup> *Five Generations of a loyal house*, pp. xxv-xxvii.

<sup>3</sup> But in the above book "thre fawlcyys of mottions" is printed—"the fawlcyys or mottions!"

(1) it shows only one, instead of three battering rams.

(2) it shows, quartered with that coat, another one with a fractured castle in the field.

The confusion is increased by another achievement, which is found on p. xxvii of *Five Generations*, and which, though it *purports* to be taken "from a copy of the docquet of the grant," shows *three* battering rams (instead of one) in the first and fourth quarters, "two above one."

There was nothing, therefore, to be done but to consult the actual docquet, which I was permitted to do by the present Garter King of Arms. It was then at once discovered that the puzzling drawing was a "*fake*" inserted by a later hand in the space left blank by the side of the docquet! This "*fake*" had been accepted without question, we have seen, by Garter Young; but the present Garter instantly observed that the ink was quite different.

It is now possible to clear up the whole matter. Reference to Glover's "Collectanea, A" shows that he visited Grimsthorpe, in 1582; that he there saw and transcribed the original grant by Hawley;<sup>1</sup> that he drew achievements of the family's arms from which he *excluded* the castle; and that he transcribed a document containing the *Latin* version of the fabulous narrative<sup>2</sup>. From that narrative is derived the tower fractured by the ram (*turrim arietatam*),<sup>3</sup> which appears in the 2nd and 3rd

<sup>1</sup> It is still preserved there (see the Historical MSS. Commission's Report on Lord Ancaster's MSS.).

<sup>2</sup> For this narrative see below.

<sup>3</sup> In the French version "Jherosme" Bertie is alleged to have borne "Trois moutons belliques et ung chasteau abbatu." The object of adding the "castle" quarter seems to have been to suggest some feat with the ram.

quarters of the Bertie coat in the peerage books, and for which, we thus discover, there is no heraldic authority.<sup>1</sup>

Nevertheless, the quartered coat is engraved in "Burke's Peerage," both under "Abingdon" and "Lindsey," while under the latter the quarters charged with the "shattered castle" are actually described as the coat of Willoughby! The same absurd blunder is found under "Lindsey" in the *Armorial Families* of that Heraldic authority, Mr. Fox-Davies. And both works, of course, blazon the battering rams "barways," not, as in the grant by Hawley, "two above one." Shirley, working from *Five Generations*, goes further and accepts the drawing on the docquet as genuine.<sup>2</sup> Even as this goes to press, one reads, in Mr. Fox-Davies' so-called *Complete guide to Heraldry* (1909), that "fractured castles (*sic*) will be found in the shield of Willoughby quartered by Bertie" (p. 282), and one similarly finds the battering-rams blazoned as "fesswise in pale," (pp. 283, 400).

We shall have to recur to Hawley's grant, for the point is of importance to the pedigree: for the present one may hazard the suggestion that the case was parallel with Shakespeare's, and that the reason of Thomas Bertie seeking a grant in 1550 and not before may not have been unconnected with his son's desire to obtain the widowed Duchess for his wife and to qualify himself, with this in

<sup>1</sup> It appears to have been tentatively introduced under Queen Elizabeth. In Lans. MS. 205 fo. 72 the shields "set forth for Mr. Berty June 1579" and for Peregrine Berty in Dec. 1576 do not show the fractured tower coat, but two other shields show (1) Bertie, (2) "ye castell."

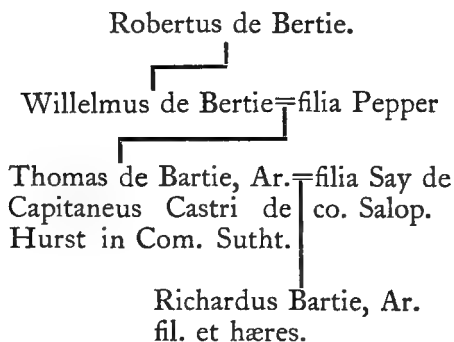
<sup>2</sup> *Noble and Gentle*, 3rd Ed.

view, as "not a gentleman of the first escutcheon."<sup>1</sup>

Even on the showing of the book written to exalt the family, the pedigree cannot be carried further than the father of Thomas Bertie who was granted the coat of arms in 1550, and of whose wife not even the Christian name is known.

The obscurity of the pedigree is proved by the fact that this first ancestor is represented, not as the father, but as the grandfather of Thomas Bertie, not only in the peerage books but even in the pedigree certified out of the College of Arms by Garter in 1843.<sup>2</sup>

That pedigree runs as follows :—



Now we know the date of the birth of Richard Bertie accurately enough. His admission at Oxford describes him as aged 16 about Christmas last past. He was admitted 17 Feb. "anno Domini Millesimo quingentesimo trecesimo tertio secundum computationem Ecclesiæ Anglicanæ."<sup>3</sup>

<sup>1</sup> The younger Bertie was already in her confidence at the time (*Five Gen.* p. 15). I shall recur to this practice of granting a coat to the father for the benefit of the son when I come to the Smiths of the 16th century.

<sup>2</sup> *Ibid.* pp. ix, 451. Garter took it from Vincent's "Baronagium," No 20, pp. 22, 112.

<sup>3</sup> *Ibid.* 477

This has been taken to mean 17 Feb. 1533/4, with which the "Indicto septimo" which follows would agree. But the record is also dated as in the 10th year of Clement VII, which would make it a year earlier, and this (1532/3) is the date adopted by Mr. Boase in his *Registrum*.<sup>1</sup> The former interpretation would make Richard born about Christmas 1517, the latter about Christmas 1516.

Let us now turn to the will of the first ancestor Robert "Berty"—the "de Bertie" proceeds from the brain of a too obsequious herald—dated 4 Oct. 1501.<sup>2</sup> He distinctly states that both his sons, Thomas and William, are under age, and my point is that, this being so, William, the younger of the two, could not possibly be a *grandfather*, as required by the heralds' pedigree, sixteen (still less, fifteen) years later. This is certain. On the other hand, his elder brother Thomas, who is omitted from the pedigree, may well have been the father of Richard Bertie, and this, it will be found, is the only solution consistent with the known facts.

The social position of the first ancestor, now shown to be the father of Thomas and grandfather of Richard Bertie is clearly established by his will. In the first place he asks to be buried in the churchyard, not in the church, a sure mark, at the time, of social inferiority; in the next he could only bequeath to his daughter £6. 13. 4. for a marriage portion, and to his younger son, when of age, £10 and "half my cotage gardyn and croft

<sup>1</sup> (Oxford Hist. Soc.) I, 188.

<sup>2</sup> *Five Generations*, pp. 464-7.



lying to the playn at Berghsted." His elder son was to have his messuage and land at Bersted, after his mother's death, but only half the house till then. The will specially mentions a barn as belonging to each half of the house, and this, I think, suffices to identify it with that messuage *with two barns* (*cum duobus orreis*) which, with its appurtenant lands, Richard and Thomas 'Bertye' passed by fine in 1546 for the sum of £60.<sup>1</sup> The lands consisted of thirty acres (of arable) three of meadow, ten of pasture, and three of wood,—an absolutely typical "yardland" (*virgata*) with its normal appurtenances, such as the small copyhold farmer, the successor, as Mr. Seebohm insists, of the villein tenant, held in the English village.<sup>2</sup> Last of all Robert wills that "my sonnes Thomas and William shal have my working toles such as be for macyns crafte,"<sup>3</sup> words which gave me the clue by which I shall identify the father of Richard Bertie. The testator was clearly a small yeoman who could also work as a mason, and his will is typical, for the time, of the class to which he belonged.

Starting from the sure ground of record evidence, we find Richard Bertie admitted to his Oxford College as "*Ricardus Bartewe*," his surname also appearing as *Barthewe* in the University registers.<sup>4</sup> The name of his father Thomas subsequently appears under both these forms in the Acts of the

<sup>1</sup> *Ibid.* pp. 469-470.

<sup>2</sup> *The English village community.*

<sup>3</sup> The authoress vainly notes on this that "gentlemen were not only adepts in the art, but frequently possessed tools and insignia of the craft, which they transmitted to their heirs" (*Five Generations*, p. 467).

<sup>4</sup> Boase *op. cit.*; Foster, *Alumni Oxonienses*; *Five Generations*, p. 447.

Privy Council, so that its use is well established. There is a somewhat contemptuous reference also in these Acts (1555) to Richard himself as "the Ladye Katherin, Duches Dowager of Suffolk, and *Bartue* her husband," while his father is styled Thomas 'Bartue' in the Hurst Castle accounts<sup>1</sup>.

From Richard's admission entry we further learn that he had been born in *Hampshire*.<sup>2</sup> As he and his father are both represented to have been of Bersted in Kent, we seek to know why his father (Thomas) was living in Hampshire at that date, and to discover mention of him in that county.

We find it in what may seem, at first sight, an unlikely quarter. A roll of 1532-3, happily preserved among the records of the Dean and Chapter of Winchester, reveals to us "Thomas Bartewe" as the mason employed on the cathedral fabric with a yearly fee of 13s. 4d.<sup>3</sup> The staff of the clerk of the works (*custos operum*) consisted of "his workmen, his plumber, glazier, carpenter, mason, tiler," etc.,<sup>4</sup> and the fact that Thomas "Bartewe" was his mason reminds us at once of the clause in Robert Berty's will by which he left to his sons *Thomas* and William "my working toles such as be for macyns crafte."

Harrison, writing half a century later, praises "our skilful masons" and gives his opinion that "masonry did never better flourish in England than" in the time of Henry VIII. A great

<sup>1</sup> Dugdale styles the family 'Bartu' in his *Baronage* (II, 408-9).

<sup>2</sup> This is duly recognized in *Five Generations* (p. 1) and the *Dict. Nat. Biog.*

<sup>3</sup> *Obedientiary Rolls of St. Swithun's, Winchester* (Hampshire Record Soc.) pp. 107, 219, 222.

<sup>4</sup> *Ibid.* p. 56.

impetus was given to the building of important houses not only by the growing wealth and luxury of the age, but also by the dissolution of the monasteries and the erection of seats for their grantees in their place or out of their materials. Even in Harrison's time, however, the status of masons was still low, for he classes them at the bottom of his social scale as "the fourth and last sort of people in England, day-labourers..... and all artificers, as tailors, shoemakers, carpenters, brick-makers, masons etc.".. We should naturally, therefore, expect difficulty in tracing the career under Henry VIII of so obscure a person as was even a cathedral mason.

Some years, however, after the Winchester entry, we are given an interesting glimpse of him (though it might well escape notice) dealing as a practical mason with the windows and chimneys of the great house that was building for Wriothesley at Titchfield near Southampton out of the fabric of the abbey there, of which he was grantee. Among the State Papers is preserved a letter from John Crayford to Wriothesley (12 April 1538), reporting progress on the mansion, in which he says that he was "the rest of that day & this day conferring and advising with *bartyew* wyndowes & chymneys in the said north yle beneth & other places," and he adds in a postscript that "*bartyew*..... concludes that smoke shall not be avoyded by the chymneys of your chieffe lodgings if the steple stande," etc.<sup>1</sup>

<sup>1</sup> See Mr. St. John Hope's paper on *The making of Place House* in *Archæological Journal*, vol. lxiii, for details of the building.

This letter reads as if Wriothesley would know who "bartyew" was, which is of special interest in view of the evidence we shall come to in the following year, and also because we are told of his son Richard Bertie that "in early life he was attached to Wriothesley."<sup>1</sup> Wriothesley himself was a typical upstart of the days of Henry VIII, an attorney who had risen to wealth by the plunder of dissolved monasteries, the son, nephew and grandson of heralds, who had provided themselves with a false surname and a pedigree which Mr. Eyton has described as "a tissue of falsification and forgery." Of his uncle, Garter King of Arms, General Wrottesley writes that "for the forgery and falsification of documents this Thomas stands pre-eminent even amongst the Tudor heralds."<sup>2</sup>

Next year (1539), King Henry VIII resolved to erect, for coast defence, some blockhouses, the names of which are still familiar enough. Among these was one at Calshot Point on the Solent, to which, as to the others, were appointed a "master carpenter, bricklayer, and master mason," and its "master mason" was "Mr. Bert," evidently now a rising man.<sup>3</sup> For that this was Thomas "Bartewe" is shown by a letter of the same year (12 Sept. 1539) from the Earl of Southampton to Cromwell:—

"The barbican at Calshoris-point (i.e. Calshot Point) will be ready by Michaelmas, and to cover this the King will take the lead from Beauley,<sup>4</sup> for which Mr. Wriothesley must make a warrant which his grace will sign. The

<sup>1</sup> *Five Generations*, p. I.

<sup>2</sup> *History of the family of Wrottesley* pp. 276-7.

<sup>3</sup> State Papers, Domestic.

<sup>4</sup> Beaulieu Abbey.

other point is the cost of the works there and at the Cowe in the Isle,<sup>1</sup> which by *Bartue's* declaration will ask 1000 marks (£666.13.4.) more than the money he now has."<sup>2</sup>

This letter shows that "Bartewe" had risen to be what would now be termed a builder. Henceforth his work lay among the Solent "castles," for the *Acts of the Privy Council*, 2 February, 1545/6 show us letters written "for delyvery of XII foddres of lede<sup>3</sup> to thandes of Thomas Bartue or Rigewaye to be employed at the fortifications at Haselnorth." Four years later they record (18 March 1549/50) "a letter to Thomas Bartue to prepare vm<sup>l</sup>. quarters of lyme for Sir Hew Paulett for Jersey," where "bulwerkes" were being erected, and later in the same year (18 October 1550) is entered "a warrant to deliver to Thomas Bartue Captain of Hurst £17. 15. 0 for 230 quarters of lyme by him sent to Sir Hugh Powlet to Jersey, and more to him for 62 quarters of lyme, which maketh £23. 6. 3." A letter was again sent "to Mr. Bartue of Hurste" ordering lime to be sent to Jersey.

I have gone thus closely into the matter in order to identify "Thomas Bartewe," the Winchester cathedral mason of 1532/3, with the "Thomas Bartue, Captain of Hurst" who was still dealing in lime in 1550, and thus to show for the first time who the "Thomas Bertie of Berested in the

<sup>1</sup> i.e. Cowes (where two castles were erected).

<sup>2</sup> *Calendar* of Henry VIII papers, from a letter in the British Museum (Cott. MS. Titus B. i, 396), printed by Ellis (2nd Series, ii, 86). The name is printed Bartine in both cases, but I have examined the MS., and it can be read "Bartue."

<sup>3</sup> From dissolved religious houses.

countie of Kent<sup>1</sup>..... Capitayne of Hurst Castell," who received a grant of arms in July, 1550, really was. That according to the grant he had "of longe tyme used himself in feates of armes and good works" is an example, I fear, of that practice by which, in Elizabethan days (according to Harrison), when a man could afford to "bear the port, charge, and countenance of a gentleman, he shall for money have a coat and arms bestowed upon him by heralds<sup>2</sup> (who in the charter of the same do of custom pretend antiquity and service, and many gay things)."

Now we know why Richard Bertie was spoken of as "no gentleman," and why his wife admitted that he was "meanly born." Greatly to his credit, he had taken advantage, like so many distinguished churchmen, of the system that opened the Universities to the sons of relatively poor men and rose by his fine scholarship to become a fellow of his College ("as a Hampshire man"),<sup>3</sup> even as his father by his own efforts raised himself in the social scale. That the Dowager Duchess should marry one so far her inferior in rank was no isolated phenomenon: her step-daughter, also Duchess of Suffolk, but a far greater lady—for her mother was sister of Henry VIII and widow of Louis XII of France—had chosen for her second

<sup>1</sup> Although he is so described in the grant, it is clear that Hampshire was his home. In the Probate Registry at Winchester there is preserved the inventory of the goods of "Thomas Bartue," late Captain of Hurst castle, with administration of June 5 to his relict, *Alice* "Bartue" annexed. His goods and chattels at Hurst were valued at £38.8.10 and at Winchester (where he seems to have had a house also) at £3.12.0. These facts are not mentioned in *Five Generations of a loyal house*.

<sup>2</sup> What would poor Mr. Fox-Davies or Mr. W.P.W. Phillimore say to this candour?

<sup>3</sup> *Five Generations*, p. I.

husband Adrian Stokes, "apparently one of the gentlemen of her household,"<sup>1</sup> a match deemed by some to have impaired her own nobility;<sup>2</sup> and this duchess's daughter, Lady Mary Grey (sister to Lady Jane Grey), made so deplorable a marriage with a "serjeant porter at Court," that he was sent to the Fleet Prison, and she was placed under restraint, "sad and ashamed of her fault."<sup>3</sup>

When Richard Bertie, in or about the year 1552, became the husband of the Duchess of Suffolk, an heiress and a baroness in her own right, the social discrepancy must have caused comment in an age when, as Burghley himself found, uncharitable things were said of the grandfathers of rising men. Like the Berties, the Fanes had sprung from a small Kentish yeoman, but at a rather earlier date; and though they had a longer pedigree at their back when the Nevill match connected them with the peerage (1574), the sequel may be told in Mr. Barron's words:—

"To the Elizabethan mind the match of Fane and Nevill had a certain scandal of inequality; but about this time appeared a document which should somewhat redress the balance of rank. This was the Fane pedigree as set forth and prepared by the heralds of the realm. Of this pedigree remain rolls of ancestry beautiful with illuminated shields, and attested by the signatures of officers of arms "tracing the pedigree" in triumph to its source in Howel ap Vane, a nobleman who flourished "long ante-

<sup>1</sup> *Complete Peerage*.

<sup>2</sup> Bertie vigorously impugned this view in the course of his case:—"Justice Brooke in his abridgement reciteth an opinion of a mad judge in an uneven time, and in the heat of indignation against one Mr. Stokes, borrowed from the Roman laws, 'quod mulier nobilis nubens viro ignobili desinit esse nobilis.' And therefore enforceth that a duchess or countess marrying an esquire or gentleman loseth her name and dignity" (Collins, p. 18).

<sup>3</sup> *Five Generations*, pp. 40-41.

cedently to the Conquest," as the peerages even yet remind us."<sup>1</sup>

It was also at "about this time" that there was concocted for the house of Bertie a pedigree by the side of which all other pedigrees would pale, a tale that gladdened its descendants' hearts even in Victorian days till Freeman, furious at its falsehood, arose and smote it in his wrath.

It was while Bertie was hoping to be summoned in his wife's barony of Willoughby that, in the golden age of heraldic fiction, there was produced for him a pedigree based upon a document which, unfortunately, is known to us only from a transcript made at the time (1573)<sup>2</sup> for the purpose. In "Five Generations of a Loyal House" this precious record meets us not only in a French which, as Mr. Barron would say, is that of an Elizabethan Wardour Street, but in Latin, and is even given in facsimile. A Lansdowne MS. is responsible for the French version, and Glover's Collections in the College of Arms,<sup>3</sup> for the Latin one. The origin of the family is thus stated in these two versions:—

ces ancestres et predeces- seurs ont iste franck Barons en Bertieland qui est es parties du Prussie. Les- quelles ont assali cest Isle ensemble les Saxonnois. <sup>4</sup>	sui majores liberi Barones fuerunt in Bertiland quæ est in finibus Prussiae, et insulam hanc cum Saxonibus invaserunt. <sup>5</sup>
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From the fifth Century this history passes

<sup>1</sup> *Northamptonshire Families*, p. 84.

<sup>2</sup> *Five Generations*, pp. xi, xvii. See also Lans. MS. 205, fo. 72.

<sup>3</sup> Certified by C.G. Young, Garter (*Ibid.* p. 446).

<sup>4</sup> *Ibid.* p. xix.

<sup>5</sup> *Ibid.* p. 444.



straightway to the close of the tenth, about which time "ung nomme Lupoldus (!) de Bertie fut connestable du chasteau de Douure." I may venture perhaps to quote the verse in which the bard of the family thus celebrates in song the office held by her (?) ancestor.

"He happened at the time to hold  
A place of trust and power,  
As Constable and Warden bold  
Of Dover's ancient tower." <sup>1</sup>

"A trainband captain eke was he"—we find ourselves tempted to proceed, but suddenly remember that "Dover's tower," though far more ancient than the Berties, was not nearly so old as that Æthelred under whom "Lupoldus" served.

Why pursue the anachronisms? "Ce Lupoldus plaidoya longuement avec les moynes Augustins de Canterberie."

"In those dark times dispute arose  
On lands my fathers swayed,  
And Austin's monks they dared oppose  
And holy tithes evade." <sup>2</sup>

"Lupoldus," however, was a worthy sire for that "Burbachius de Bertie" whose wondrous name was surely suggested by that of Thomas Burbage, executor to Robert Bertie in 1501.

But now an anxious time was approaching for the Bertie pedigree. Nearer and nearer drew the dreadful test of Domesday. "Lupoldus," it seems, had been seated at "Bertiesteit," the home, as Bersted, of his far-off descendants; yet Domesday

<sup>1</sup> *Five Generations*, p. xliv.

<sup>2</sup> *Ibid.* p. xliii.

knows nothing of any Bertie lords. At all hazards it was necessary to account for their absence from the record. A friendly hint from the pedigree's begetter, and "Burbachius" fled to France! It was not till the middle of the twelfth century that the family ventured back.

Thenceforth the pedigree is continuous, the French document, followed by the heralds, placing at its head "ung Philippe de Berties de la mesne (*sic*) famille," who returned to England with Henry II. in 1154 and "recouvert son patrimoine en Bertiesteit" from that prince for his valour in battle. But the only recorded incident in the history of the family is a certain regrettable episode in the life of "Jherosme" de Bertie who flourished at "Bertiesteit" under Henry V. Taunted by one of the Canterbury monks, not with his amazing name, but with his ancestor's conduct to those monks four centuries before, the haughty descendant of "Lupoldus" would have slain the rash preacher "se il ne eust este empesche de ceulx qui estoient presents." For this he had to pay right heavily; and yet the penitent, over and above, built a new aisle ('coste') at his own expense to the monks' church ('ce temple') and was buried in the chapel, on a column of which were placed his arms, "scavoir est Trois moutons belliques et ung chasteau abbattu."

In Lady Georgina Bertie's book we are even given an imaginary sketch of the column bearing these arms (p. xvi)—arms of which even the Bertie coat was first granted by Hawley more than a century later. It is admitted however, that

"the chapel and monastery so richly endowed by him are no longer to be traced (being probably swept away, with many others, by the rude spoilers of Henry the Eighth's reign)."<sup>1</sup>

Now the "Monastere de Canterberie" could only mean either St. Augustine's, Canterbury, or Canterbury Cathedral itself. The author of this precious document appears to have had in mind the former, and the history of that church knows nothing of "Jherosme," of his aisle, or of his arms.

The reader will doubtless have now discovered that the whole of this precious document is a clumsy concoction like that which was forged, in a similar jargon of Old English, to prove that the Essex Smiths were Caringtons,<sup>2</sup> or that which was similarly forged in French to provide the Cecils with pedigree and arms;<sup>3</sup> and which similarly dates from the great age of Tudor heraldic fiction. Yet this must have been the record on which Richard Bertie relied to prove that his own house was as ancient as that of FitzAlan and was that alone on which was based the pedigree from "Philippus Bertie oriundus a Leopoldo de Bertie" down to "Jeronimus de Bertie" supplied by Garter out of Heralds' College in 1843.<sup>4</sup> Both document and pedigree were strenuously upheld in "Five Generations of a Loyal House," and the latter appeared year after year as genuine in "Burke's

<sup>1</sup> *Ibid.* p. xxxv.

<sup>2</sup> See the paper on 'the great Carington imposture.'

<sup>3</sup> See Mr. Barron's remarks on it in *Northamptonshire Families* (p. 21). It made "David Cecile" son of "Guillaume Cecile" of Frasné by "une femme de la maison très cavalière de Beaupair."

<sup>4</sup> *Op. cit.* p. 451. Jerome is connected with the real ancestor, the testator of 1501, by placing another "Robertus de Bertie" between them (pp. ix, xxv, 451).

Peerage" till, in 1870, Freeman denounced it thus :

Can there be a wilder fable than this ? Yes ; there is one a good deal wilder, which Sir Bernard Burke repeats without a shadow of doubt in the pedigree of Bertie Earl of Lindsey. This astonishing house, whose name 'in olden deeds' seems to be spelled in many ways as is also the case 'in olden deeds' with the name of Smith, Brown or any other..... "first landed in England in company with the Saxons." Mark the dignity of the race. The Berties, it would seem, were altogether on a level with their companions the Saxons, and they must have quite overshadowed the Angles and Jutes..... Unhappily however, from the fifth century to the eleventh we have no mention of this remarkable stock..... In the eleventh century, however, the Prussian stock put forth a remarkable shoot in the form of Leopold Bertie. The student of nomenclature might amuse himself by the question whether Leopold Bertie or Bill Snooks would be the more impossible forefather at the time..... On the whole, this is probably the most monstrous of all our fictions.<sup>1</sup>

Three years earlier (1874), Mr. G.T. Clark had contributed to the *Archaeological Journal*<sup>2</sup> a paper with the high sounding title "Charters of the Berties of Bertiested or Bersted." In it he wrote that—

"The ancestry of Richard Bertie has been thrown into doubt by the putting forth by the heralds of a pedigree of thirteen generations from a certain Leopold Bertie, of Bertiesland in Prussia, and Constable of Dover Castle in the reign of King Æthelred, a most mythical personage, and at best an anachronism. Such fictions were found in high places under the house of Tudor, and their natural

<sup>1</sup> "Pedigrees and Pedigree makers" in *Contemporary Review*, 1877, pp. 29-31.

<sup>2</sup> Vol. xxxi, pp. 284-288.

effect, when shown to be without proof, was to cause disbelief even in the true pedigrees, where such existed. The Berties thus suffered, and it is but recently that their true position as landowners and gentry of Kent from an early period has been recognised by the highest authority in such matters, and they have found a place in the *Libro d'Oro* of Mr. Shirley."

A sadly careless and inaccurate archæologist, Mr. Clark, while thus rejecting the "fiction" of the heralds' pedigree, actually heads his article "Bertiested or Bersted," though Bersted was never "Bertiested" save in the riotous fancy of those very heralds who wished thereby to give a fictitious antiquity to the Berties. Moreover, he coolly annexed Walter "de Berstede," sheriff of Kent under Edward I, as bearing "the name of Bertie" in one of its "various forms," though the two names, of course, were wholly distinct. Lastly, his brief remarks contained the further assertion that—

The grant of arms to the family, 10 Jan. 4 Henry VI (*sic*), is to the Captain of Hurst Castle, and bears three battering rams quartering (*sic*) with a fractured castle, evidently allusive to the office of the grantee.

As we have seen, the grant was made 10 *July* in the fourth year of *Edward VI*, and the battering rams coat then granted did *not* contain the quartering with the "fractured castle."

And the so-called "charters of the Berties" prove to be only three deeds of no importance, which had been duly noted by Lady Georgina Bertie as seen by Larking among "the Thurnham charters" in the possession of Sir Edward Dering

at Surrenden Dering.<sup>1</sup> Only one of them is granted by a Bertie, namely that by which Richard Bertegh grants "a piece of land" called "Helde" in Thornham, 14 Hen. IV.

Lastly, as to Mr. Evelyn Shirley, "the highest authority in such matters," it is the case that in his 3rd edition (1866) he did admit the Berties within the portals of his *Libro d'Oro*, writing as follows :—

"The ancient extraction of the Berties from Berstead in the county of Kent is proved by the Thurnham Charters in the possession of Sir Edward Dering and by various public records of undoubted authority ; and although the exact line of pedigree is by no means clear, there appears to be no reason to doubt the descent of this "undefamed house" from John or (*sic*) Bartholomew de Berteghe who were living in the 35th. of Edward I.

But in this same edition Mr. Shirley again insisted that he intended to include "those only who were established as *county families* inheriting arms from their ancestors at that period" ("the beginning of the 16th century"). And I have proved to demonstration that "at that period" the Berties were neither a county family nor in possession of arms (still less of hereditary arms).<sup>2</sup>

"Burke's Peerage," though it has now dropped that pedigree on which Mr. Freeman poured the vials of his scorn, characteristically persists in making Robert Bertie, now the earliest ancestor, "Lord of Bersted" on the authority of a MS. containing the bogus story, although the statement

<sup>1</sup> *Five Generations*, p. 458.

<sup>2</sup> Mr. Shirley's statements were avowedly derived from *Five Generations of a loyal house*, and they show how careless he was in his acceptance of authorities.

is at once disproved by the known history of the manor.

ROBERT BERTIE, Lord of Bersted (see Rawlinson's MS. Bodleian B 73) had a son Robert, who lived at Bersted (will proved at Canterbury, dated 17th year of Henry VII), and by Marion his wife had a son WILLIAM, who was father, by Elizabeth Pepper his wife, of THOMAS BERTIE, who..... d. in 1555, leaving..... two sons, of whom the eldest RICHARD BERTIE with his brother Thomas, in 1546, suffered a recovery of lands in Bersted and Maidstone (*see* fines, Chapter House, Westminster).

I have shown that this pedigree is chronologically impossible.<sup>1</sup> We learn from it, however, that Somerset Herald, editor of the volume before me (1899), must suppose that those precious documents, the Fines, are kept at Westminster, in the Chapter House. Let us hope that such weird beliefs on the subject of our public records are not extensively held at Heralds' College.

And yet, though the Berties were not, as alleged, lords of Bersted, and still less gave their name to it,<sup>2</sup> their surname undoubtedly appears at an early date in the neighbourhood, where they may, like other yeoman families, have been of some antiquity. In the early part of the 14th century it is found as "de Berteghe" and subsequently as "Berteghe" and "Berteye." The inference is that the surname, like so many others, was derived from some obscure locality of which the name has now vanished.

<sup>1</sup> See p. 34 above.

<sup>2</sup> Lady Georgina Bertie was severe on Sir Egerton Brydges, who "attempts to refute the derivation of the name of Bersted, by observing that people never gave names to places. The 'smile,' as he calls it, in speaking derisively of Collins' labours, recoils upon himself" (p. xxxv). Brydges, however, was in this case right, and moreover the early form of Bersted was not "Bertie-steit," but "Berghestede," as the evidence in her own volume (p. 459) proves. It is "Berghested" in 1316 and "Berghestede" in 1346 (*Feudal Aids* III, 16, 40).

What, if any, connexion there was between these early Berteyes and the Robert living under Henry VII we do not know.

In any case the rise of Robert's heirs was singularly rapid. The son of the cathedral mason married a Duchess ; the grandson sat among the peers of the realm as the holder of a great feudal barony ; the great-grandson received an earldom, and established his right to the ancient office of Great Chamberlain of England. Successive marriages with a Willoughby and a Vere had connected the Berties with the old nobility and had brought them wealth and honours. *Tu felix Austria, nube!* It is needless to name a modern family which similarly owes its social rise to two successive marriages, for it would probably be guessed.

Which reminds one that, in the peerage as now constituted, the Berties themselves, holders of earldoms created in Stuart days (1626 and 1682), must be ranked among the older nobility, though it was strange to find, the other day, Lord Abingdon described as "the head of one of the oldest Roman Catholic families' houses in England."<sup>1</sup> For Lord Lindsey is the head of the Berties, nor could they possibly be styled an old Roman Catholic house. Richard, their founder, "was decidedly attached to the Reformed Church," while his wife "had distinguished herself by her zeal for the Reformation;"<sup>2</sup> and their son Peregrine, as Lord Willoughby, solemnly swore to the States General in 1585 to uphold "*la vraie religion Chrestienne comme elle*

<sup>1</sup> *Daily Telegraph*, 10 August 1908.

<sup>2</sup> *Five Generations*, pp. 1, 14.



*est a présent exercée tant en Angleterre qu'en les Pays Bas,*"<sup>1</sup> contemporary evidence on the identity of the Anglican with the Dutch religion, which is enough to make Lord Halifax or Mr. Athelstan Riley aghast.

The Berties attained, moreover, a higher dignity than an earldom. A Marquisate (1706), followed by the Dukedom of Ancaster, was bestowed on the fourth Earl of Lindsey, though these higher dignities became extinct in 1809. The Great Chamberlainship of England had already passed from the house on the death of the fourth Duke thirty years before. The event is thus alluded to in a characteristic letter from Horace Walpole to Sir Horace Mann.

"The Duke of Ancaster is dead of a scarlet fever contracted by drinking and rioting, at two and twenty..... Fortune seems to have removed him to complete her magnificent bounties to one family. Do you remember old Peter Burrell, who was attached to my father? His eldest grand-daughter is married to a Mr. Bennet, a man of large estate; the second to Lord Algernon Percy; the third to Lord Percy; and the youngest one, the only one at all pretty, to Duke Hamilton. Lady Priscilla Elizabeth Bertie, eldest sister of the Duke of Ancaster, fell in love with their brother, and would marry him, not at all at his desire; but her father, the Duke of Ancaster, had entailed his whole estate on his two daughters after his son, to the total disinherison of his brother Lord Brownlowe, the present Duke;—and the grandson of Peter Burrell, a broken merchant, is husband of the Lady Great Chamberlain of England with a Barony and half the Ancaster estate. Old Madam Peter is living to behold all this deluge of wealth and honours on her race. The

<sup>1</sup> *Ibid.* p. 150.

Duchesses of Ancaster have not been less singular. The three last were never sober. The present Duchess Dowager was natural daughter of Panton, a disreputable horse-jockey of Newmarket ; and the new Duchess was some lady's woman, or young lady's governess. Fortune was in her most jocular mood when she made all these matches or had a mind to torment the Herald's office." <sup>1</sup>

Contemporary statements such as this are of interest always for the light they throw on the status of a family at the time, but the writer's words might convey undue depreciation of the Burrells. The 'broken merchant' was, no doubt, a city man, whose son was born in Leadenhall Street, and educated, like himself, at Merchant Taylors' School ; but he sat in several Parliaments, as did his son after him, and was High Sheriff of Kent in 1734. His father, moreover, was the 9th son of Walter Burrell of Cuckfield, where the family had been established since the days of Henry VIII and had held the manor of Holmsted since 1605, <sup>2</sup> though the "white marble tablet" in Cuckfield church, recording their earlier ancestry is suspected by its careful incumbent to be no older than "circ. 1780" and to contain assertions which await proof. <sup>3</sup>

But the rise of the Burrell fortunes was sudden enough, clearly, to make no ordinary impression. Wraxall dwells on it at great length <sup>4</sup> telling us how it all began with a chance meeting, in the South of France, of Lord Algernon Percy with

<sup>1</sup> Letter of 9 July 1779.

<sup>2</sup> See the interesting history of the family by Canon Cooper in *Sussex Archaeological Collections*, vol. xliii.

<sup>3</sup> *Ibid.* The arms of the Sussex Burrells are totally distinct from those of the families from whom it derived them.

<sup>4</sup> *Posthumous Memoirs*, I, 18-22.

one of Mr. Burrell's daughters, in 1774, and how—

The only son, a young man (it must be owned, for I knew him well) of the most graceful person and the most engaging manners, having captivated the affections of Lady Elizabeth Bertie, eldest daughter of Peregrine, Duke of Ancaster, she married him.

On her brother's death, he adds, she brought him the Willoughby d'Eresby barony with "great part of the Ancaster estates."

Nor did this peerage constitute her only dowry ; with it she likewise inherited, during her life, the high feudal office of Lord Great Chamberlain of England, which has been ever since executed by her husband or her son. Finally, Mr. Burrell himself, after being first knighted, was raised to the rank of a British peer in 1796 by the title of Lord Gwydir.

In no private family, within my remembrance, has that prosperous chain of events which we denominate fortune, appeared to be so conspicuously displayed, or so strangely exemplified as in the case before us. The peerage of the Burrells was not derived from any of the obvious sources that almost exclusively and invariably conduct, among us, to that eminence.

It did not flow from favouritism, like the dignities attained by Carr and Villiers under James the First<sup>1</sup>..... As little was it produced by female charms, such as first raised the Churchills in 1685,<sup>2</sup> the Hobarts under George the Second,<sup>3</sup> and the Conynghams at a very recent period<sup>4</sup>.....

<sup>1</sup> Successive personal favourites of the King, of whom the first was made Earl of Somerset, and the second Duke of Buckingham.

<sup>2</sup> Arabella Churchill was mistress to James II, who raised her brother (the future Duke of Marlborough) to the Peerage.

<sup>3</sup> John Hobart (afterwards Earl of Buckinghamshire) "is supposed to have owed his peerage [in 1728] to the influence of his sister Henrietta.... said to have been mistress to George II, when Electoral Prince." (*Complete Peerage*).

<sup>4</sup> A marquessate and three other peerage dignities were bestowed in 1816 and 1821 on Lord Conyngham, whose wife "was well-known as a Court favourite of George IV." (*Ibid*).

Mr. Burrell..... possessed no such overwhelming borough interest, or landed property, as could enable him at a propitious juncture, like Sir James Lowther, to dictate his pleasure to ministers and to kings. The patrimonial inheritance of the Burrells was composed of a very small estate situate at Beckenham in Kent. In his figure, address, and advantages of person, accompanied with great elegance of deportment, might be said to consist the foundations of his elevation... As little did his three sisters owe their elevation to extraordinary beauty..... Never were any women, in fact, less endowed with uncommon attractions of external form than the three sisters just enumerated.

Once again, so recently as 1870, the death of a brother threw into abeyance between his two sisters the ancient barony with the share of the Burrells in "one of the greatest hereditary offices of the English monarchy."<sup>1</sup> Thus it was that by the irony of fate, that share came to be divided between a house of mercantile origin, descended from a Chesterfield alderman, and that which was founded by a Nottingham mercer who bore the name of Smith.

<sup>1</sup> Wraxall, who so describes the office of Lord Great Chamberlain, seems to have imagined, like Walpole, that it passed, of right, to the elder sister, Peter Burrell's wife, although it was decided by the House of Lords in 1781 that it descended to both the sisters, a decision which has been since upheld.

## THE BARONY OF DELAWARR.<sup>1</sup>

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*Descent of the barony in the 16th century.—Crime and exclusion for life of William West.—Exclusion of Sir Owen West's heirs.—The old barony confirmed to William West's son.—Proof that William West had a new creation by patent.—Bearing of this on Peerage law.—The heirship to the barony.*

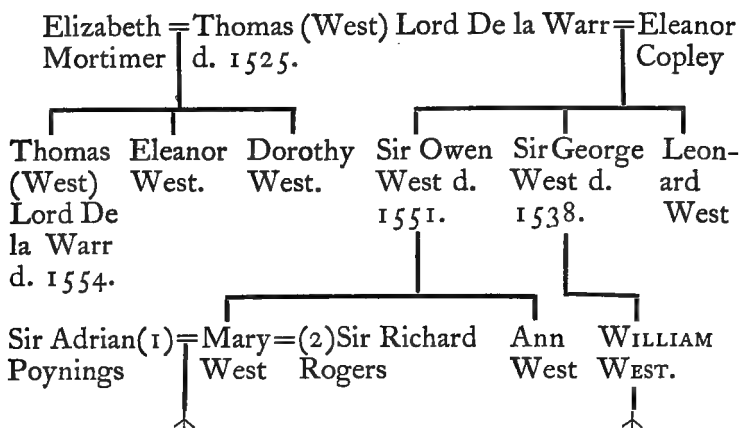
Known to us partly from Coke's Reports and partly from Dugdale's 'Baronage,' the case of the Delawarr barony in the 16th century is among the strangest in the Peerage. Though one of its most perplexing features remains as yet obscure, it is possible to correct on another point the version now accepted. And as this has a somewhat important bearing on the growth of peerage law, the task is worth doing.

The fullest modern account of the case is that given by Mr. Pike in his *Constitutional History of the House of Lords* (pp. 119-129), where it is claimed as "in many ways a landmark in the history of the peerage." But the two special points that we have to consider are: (1) how William West came to be heir to the barony, to the exclusion of his uncle's issue; (2) how and when he became Lord Delawarr by a new

<sup>1</sup> The *De* in this name and style is a late addition and as wholly intrusive as in the Irish 'De La Poer' (properly 'Le Poer'). Save for a solitary summons (of military service) to Thomas 'de' la Warr in 1344, the 'De' was not added before the reign of Edward III. The family, whose original surname was La (or Le) Warre (or Werre), gave name to Wickwar(r) in Gloucestershire, and some of them settled in Dublin, when its connection with Bristol was close, in the 12th century. The American State of Delaware also derives its name from them (through the title).

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creation. A short pedigree is indispensable for the comprehension of the case :



The pedigree shows that on the death of Thomas, Lord De la Warr, in 1554,<sup>1</sup> the family estates (which were considerable) would have passed to his sisters of the whole blood as his heirs, had it not been that they were entailed on his brothers of the half blood in tail male. But the narrative given by Mr. Pike is inconsistent (he failed to observe) with the dates given by himself. This confusion is traceable, through Collins, to Dugdale, who cites the Rolls of Parliament of 2 Edw. VI for the following story.

This Thomas, Lord la Warr, having no issue of his body took William, his brother's son (*who stood his next heir*)<sup>2</sup> and brought him up in his own house ; but he being not

<sup>1</sup> It is thus referred to in Machyn's *Diary*, p. 71 (1554). "The x day of October was bered the good lord De la Warr in Sussex, with standard, banar of armes, banar-roll, (coat) armur, target, sword, elmet, with harolds of armes ; then came the corsse with iiij baners borne about hym. (He) was the best howssekeper in Sussex in thes days, and the mone (was greater) for ym, for he ded withoutt issue."

<sup>2</sup> The italics are mine.

content to stay till his uncle's natural death, prepared poyson to despatch him quickly. Which being discovered, so highly incensed the good old man that, in 2 Edw. VI. upon complaint thereof in Parliament, he procured a special Act to attain him, so that he might not be capable of succeeding him in his Lands or Honour.<sup>1</sup>

The strange thing, however, is that no such Act is now recorded on the Parliament Roll, as Mr. Pike observes, a fact which I have carefully verified. But the Lords' Journals record among the "Acts passed in the 3rd session of the Parliament begun 4th Nov. 3rd Edw. VI. (1549) and continued till 1st Feb., 4th Edw. VI. (1550) "An Act for the disinheriting of William West during his life only." <sup>2</sup>

This proves that the alleged attempt cannot have taken place later than 1549.

Now the story told by Mr. Pike is that—

After the death of George in 1538, and of Owen in 1551, George's son William became the heir in tail male according to the terms of the settlement.

William being then a very young man and being anxious to expedite his succession to the inheritance, mixed some poison, etc.

If he did this not later than 1549, he cannot, it will be seen, have been heir to his uncle, as alleged, at the time. That heir was then Sir Owen West, who did not die till the year 1551 ;<sup>3</sup> and it was he, therefore, not William, who would have reaped the benefit of the crime.

This is no carping criticism ; it seems to bear on

<sup>1</sup> *Baronage*, ii, p. 141.

<sup>2</sup> *Lords' Journals* i, p. 398 (the reference given by Mr. Pike).

<sup>3</sup> Between 17th July and 30th October.

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the difficult question of why the issue of Sir Owen was passed over in the succession to the barony, if his nephew William was treated as the heir to his own exclusion. On the other hand, it is clear that the family estates were duly entailed on Sir Owen before William and his issue,<sup>1</sup> so that he cannot have been illegitimate or otherwise incapacitated from succeeding to the dignity. The first difficulty, therefore, unexplained is why William should have tried to poison his uncle Thomas when it would only have opened the succession to his uncle Sir Owen, not to himself. The second difficulty is that caused by the exclusion of Sir Owen's issue from succession to the peerage. This has greatly puzzled writers on peerage history, and has led them to suggest with some confidence that the barony might yet be claimed by his heirs.<sup>2</sup> As a matter of fact Courthope states that—

Sir Adrian Poynings considered that his issue had, in right of their mother, a right to the barony, and in the 9th Eliz., 1567, a case was prepared in which that claim was urged; but the heralds of that day, upon what ground it is impossible now to say, were of a different opinion.<sup>3</sup>

It is greatly to be hoped that something more may be found in those MSS. at the College of Arms on which Courthope worked, and the mystery cleared up.

Mr. Pike definitely holds that "according to more recent doctrines" (*i.e.* those in accordance

<sup>1</sup> See, for instance, the Inquisition on the death of Lord De la Warr in 1554.

<sup>2</sup> See, for instance, the remarks of Sir Harris Nicolas in *Retrospective Review*, 2nd Series ii, p. 300, and those in *The Complete Peerage*, iii, pp. 48-9.

<sup>3</sup> *Historic Peerage*, p. 150.



with which the House now administers the law) the barony fell into abeyance in 1554, and no heir male had any right to it. And he makes the tentative suggestion<sup>1</sup> that the judges, in 1597, may have been influenced by the doctrine of barony by tenure, the heir male being in possession of the family estates. To me also this solution had occurred as possible ; but its difficulty is that, in the Abergavenny case, the judges, about the same time, gave their decided opinion in favour of Lady Fane, as heir general, although Edward Nevill's possession of Abergavenny afforded a much stronger case for barony by tenure than any lands possessed by the heir male of the Wests.

It is anticipating somewhat to speak of the year 1597, the date of "Lord Delawarr's case" reported by Coke, who seems to have been himself his counsel. The case had arisen in this way. William, the "young man in a hurry," had been disinherited for life, by the above private Act, wholly as to the title and partially as to the lands. As to these, however, his uncle had not been too harsh with him. He was to have the enjoyment of the chief family seat, Offington in Broadwater (Sussex), together with Ewhurst Park and a house in town. He even seems to have been popularly regarded as 'Lord De la Warr,' though when he raised the question under Mary (1556) by claiming to be tried as a peer his claim was rejected.<sup>2</sup>

<sup>1</sup> *Op. cit.* p. 126.

<sup>2</sup> See extract from *Wriothesley's Chronicle* printed below, in the paper on 'The muddle of the law.' His doubtful status is also shown by this extract from *Machyn's Diary*, p. 109. —

1556. "The last day of Juin was led from the Towre unto Yeld-halle

Passing over his attainder and subsequent restoration in blood, we have the fact that, according to Dugdale, "he obtained a new creation to the title of Lord la Warre,"<sup>1</sup> of which I have much to say. When he was succeeded by his son Thomas in 1595, the latter claimed to be entitled to the old barony (suspended during his father's life) as well as to the new barony. Or, to put it in another way, he claimed the precedence of the old dignity. The point was referred by the House to the judges, and this led to the 'case' reported by Coke.

One of the two objections raised to the claim was that as William West had accepted a new creation, the barony so created had descended to his son Thomas, who could not waive it. But the judges, says Coke, decided that Thomas was entitled to the old dignity as well as the new, and he was accordingly allowed the precedence of his ancestors.

Now the point of interest here is the nature of the "new" barony conferred on William West. Mr. Pike writes—

Nine years after his restitution in blood, William was summoned to Parliament (1572) as Lord De La Warr. This was regarded as a new creation, and William took his seat in the House of Lords as a puisne Baron. As, however, the designation of De La Warr was accorded him, it must certainly have been supposed that no right to it existed anywhere if not in him and his heirs.

.....it is clear from subsequent events that the summons..... was held to be the creation of a heritable

Wylliam West sqwyre odor-wyse callyd lord la Ware, and cast of he(gh) treson, to be drane and quartered."

<sup>1</sup> *Baronage*, ii, p. 141.

dignity. It is clear also that this was generally considered good law in the time of Elizabeth, etc.....

And on the decision in 1597 he comments thus :—

It is perfectly clear that the summons of William followed by a sitting in Parliament was held to create an hereditary peerage. It is perhaps the first case in which a mere summons to Parliament, followed by a sitting, was held to confer an hereditary dignity; and it is closely associated with Sir Edward Coke, whose statements concerning the law on this subject appear to have been the ground of subsequent decisions.

The tree of the later law on barony by writ was now planted and destined to bear fruit in later reigns.<sup>1</sup>

No one had dwelt with such insistence on this feature of the case, but Lord Redesdale, in the third *Report on the Dignity of a Peer* (pp. 32-3) had similarly drawn the deduction that Lord De la Warr's case "may have been considered as having given sanction to the opinion in the case of Clifton"<sup>2</sup> that a writ followed by a sitting created an hereditary dignity. His words are :

In this case it is evident that the Judges, and the House, and the Advisers of the Crown, and the opposers of Lord De la Ware's claim, considered the writ issued to William in the 13th (*sic*) of Elizabeth, as having created him a Baron, and given him a dignity descendible to his son.

The belief that the new barony was created by writ of summons seems to be clearly traceable to Coke's words :

<sup>1</sup> *Op. cit.* pp. 124, 125, 129.

<sup>2</sup> See the paper on 'The muddle of the law.'

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Le roigne Eliz(abeth) appel luy al Parliament per briefe de summons et sea come puisne Seignour.<sup>1</sup>

That William was summoned to the Parliament in 1572 there is no question ; but was that summons a creation, or was it merely issued in respect of a patent of creation, granted earlier? It seems to have escaped notice that the version of the ' case ' given by Serjeant Doddridge, a contemporary writer,<sup>2</sup> although avowedly based on Coke's Report, differs from it in some particulars, especially in the statement that William "..... in the time of the Queene's Majestie that now is,<sup>3</sup> in the eight (*sic*) yeare of her reign, was created Lord De la Ware *by patent*, and had place in the Parliament according to his creation."<sup>4</sup>

Another point is that it asserts the claim to have been first submitted to " the Queen's counsell, being her Majestie's attorney general and sollicitor, " whose opinion in its favour was confirmed " by the resolution of the lord chiefe justice of England, and lord chiefe baron. " After explaining that the new dignity could not extinguish the old, " for he had not that ancient dignitie in him at the time of his creation, " the writer observes—

But this is to be noted by the reasons made for the said resolution, that if the said Sir William West had beene baron, and intitled, or in possession of the antient dignitie when he accepted the creation, the law perchance might have been otherwise, but that remaineth as yet unresolved.

<sup>1</sup> *i.e.* as (the) junior Baron, not (as Mr. Pike renders it) " a puisne Baron. "

<sup>2</sup> He was forty-two at the time.

<sup>3</sup> These words are important as proving that the passage was written before the death of Elizabeth in 1603.

<sup>4</sup> *Collins*, p. 123.

This is the origin of a note in the Hale MSS. printed by Hargrave in his notes to Co. Litt. (Inst. i, 16b).

“Baron by writ takes grant of the same barony by patent. This determines his barony by writ. Otherwise it is, if the barony was suspended. 11 Co. Lord Delaware’s Case.”

On which Hargrave pertinently comments that, as no peer can surrender or alienate his dignity (citing the Purbeck case from Shower), he must retain the old one. To this one may retort that the above writers cannot have recognised the doctrine of the Purbeck case as then settled law.

Although he was a member of the College of Arms,<sup>1</sup> Mr. Townsend wrote of “the new creation of the title in William, and the restoration, as it is called, of the son of William to the ancient place and precedence of his ancestors” that “the precise date of this new creation is nowhere mentioned with certainty: I have never seen any letters patent for it, and am of opinion that none ever passed.”<sup>2</sup>

But a later member of the College, Mr. Courthope, whose labours among its MSS. are perhaps insufficiently recognised, discovered that “Sir Edward Walker (MS. WQ. 89) gives an account of the ceremony of his creation on Shrove Tuesday 5th February, 1569”<sup>3</sup> etc. By the kindness and liberality of the present Garter<sup>4</sup> I have been supplied with a copy of this interesting record—for

<sup>1</sup> Windsor Herald 1784-1819.

<sup>2</sup> *Col. Top. et Gen.* vii, p. 159.

<sup>3</sup> This should be 1570 (*i.e.* 1569/70).

<sup>4</sup> Sir Alfred Scott Gatty.

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such it is, and in my opinion it settles the question absolutely.

As this narrative is of interest also for its full description of the manner in which a peer was created in the days of the great Queen, I print it here in full. It is signed by Lancaster Herald.

### “THE CREATION OF A BARON.

“At Hampton Court. On Shrove sonday being the 5 of ffebruary Anno Dni: 1569<sup>1</sup> regni vero Ser. Reginae Elizabethae &c. Willm. West was dubbed Knight as the Queenes Ma<sup>tie</sup> went towards her Closet. The Viscont Hereford that day bore the Sword, who being comaunded to draw it forth deliuered the same to the earle of Leycester, who therew<sup>th</sup> dubbed the aforesaid William West in her Ma<sup>ties</sup> presence. And at her Ma<sup>ties</sup> returne from her Chappell into the Chamber of presence the aforesayd Sr William West being apparaled in his kyrtle was led from his Chamber through ye great Chamber to the Queenes Ma<sup>tes</sup> presence in maner and forme following.

First the Officers of Armes 2 & 2.

Then Garter bearing his letters Patents in his right hand.

Then the Lo: Loughborough bearing his mantle.

Then on the Right hand of Sr W<sup>m</sup> West the lord Clynton L. Admirall Conducted him.

On the left hand, as the other Conductor, came the lord Cobham, Lord Warden of the 5 ports, w<sup>ch</sup> 2 lords in their Roabes of Estate conducted him

<sup>1</sup> This date is correct. In 1570 (1569/70) Shrove Sunday fell on February 5th. Courthope gives the date, in error, as “Shrove Tuesday.”

into the Chamber of presence where as they all made three reuerences to the Queenes Ma<sup>tie</sup> and at their Coming to the Cloth of Estate they stooode still and the sayd S<sup>r</sup> William West kneeled. After that Garter had deliuered the letters Patents to the Lord Chamberlayn he deliuered them to the Queenes Ma<sup>tie</sup>, and the Queene gave them to Secretary Cecill to read, and he read them openly. And at the word *Investivimus* the Queene put on his Mantell. Then ye sayd Secretary proceeding in Reading the sayd Patent to the end, w<sup>ch</sup> containyd the Creation of him to be lord Delaware, he deliuered the sayd letters Patents to the Queenes Ma<sup>tie</sup>, and the Queene deliuered them to the Lord Dellaware Who thanking the Queene highly for her gracious goodwill in advancing him to that dignity Rose up on his feete and was accompanied to the place whereas he was appoynted to dyne in this maner following :—

ffirst the trumpetts sounding and the Office of Armes.

Then Garter before the L. Loughborough.

Then the Lord of Loughborough.

Then the L. Laware led as he came in by the Lord Clinton on the right hand & the lord Cobham on the left hand.

In that dinner tyme at the second course Garter, accompanied w<sup>th</sup> the residue of the Officers of Armes, proclaymed the Queenes stile neere unto the tables end w<sup>th</sup> Largesse in this maner.

ffirst pronouncing ‘largesse’ and then the Queenes style in latyne ffrench and English and ‘largesse’ agayne the second tyme, and that done all the other

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Officers did Cry ‘Largesse’ ‘Largesse’ ‘Largesse’ three tymes. And so w<sup>th</sup> reuerence the sayd Garter and the other Officers of Armes present did retyre back from the place where they first stode further from the table, and Garter pronouncing ‘Largesse’ once and then the style of the new Baron w<sup>th</sup> ‘largesse’ agayne, then he & and all the Officers ioyntly did cry ‘largesse’ ‘largesse’ 2 times and so w<sup>th</sup> reuerence departed.

The sayd new Baron should haue sate at dinn<sup>r</sup> in his mantell and kyrtell, but because of heate, as he alleadged, he sate onely in his kyrtle and had his mantle taken of The other three Barons that assisted him at his Creation accompanied him at dynner but sate not in their mantles nor kyrtles but onely in their accustomed apparell.

### “ DUTYES TO THE OFFICERS OF ARMES AT YE CREATION OF A BARON.

Garter that day had his uppermost garment, a short Gowne of Damaske furred and garded w<sup>th</sup> velvet.

The Officers of Arms had of the Queenes Ma<sup>tie</sup> at ye hands of the Treasurer of the Chamber for largesse that day £3-6-8.

And of ye new Baron for his knights fee whereof the Pursuiuants had a part 1-0-0.

And further of the sayd new Baron for his largesse 5-0-0.

W<sup>M</sup> PENSON, LANCASTER. ”

Although this evidence is, I submit, decisive, one may add that of a letter of 20th April, 1570,



from Louvain, preserved among the State Papers, which speaks of "Mr. West, created Lord Delawarr, (being) put in" to the Lieutenancy of Sussex.<sup>1</sup>

The first point established by the evidence now given is that the case is not, as alleged, an important precedent for the recognition of a creation by writ and sitting. The fact that the father was created by patent must have been well known in the time of his son, twenty seven years later. The next point is that we have here a grave warning against presuming a creation by writ where the patent is not enrolled.<sup>2</sup> The other cases in point are those of Eure and Wharton, some quarter of a century before, which I have dealt with in another work.<sup>3</sup>

With regard to the baronies of De la Warr and their respective limitations, it was observed by Courthope that—

even if no patent were granted of the Barony in 1569-70, the present Earl is Baron de la Warr under the writ of 13 (*sic*) Eliz., he being *heir-general* as well as *heir-male* of William West, to whom that writ was addressed. If ever it should happen that the *heir-general* is not the *heir-male* of the said William, a question of great difficulty will in all probability arise on the succession of the Barony.<sup>4</sup>

But it can hardly now be doubted that the Earl inherits a barony under the patent of 1570, while as for the older barony, descendible to heirs-general, the question turns on why the issue of Sir Owen

<sup>1</sup> *State Papers: Dom. Addenda*, 1566-77, p. 286.

<sup>2</sup> It is possible that in the De la Warr case the patent was purposely not enrolled lest it should prejudice the right of the grantee's son to the older dignity.

<sup>3</sup> *Studies in Peerage and Family History*, p. 354.

<sup>4</sup> *Historic Peerage*, 1857, p. 151.

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West were excluded. If their exclusion is valid by what is now settled law, the old barony is vested in the Wests, as it was indeed recognised to be in 1597. If, on the contrary, it should prove that their exclusion was not in accordance with such law, the principle asserted in the Norfolk case would seem to involve the admission of their right and the consequent restriction of the earl's right to the later barony alone.

## PEERAGE CASES IN THE COURT OF CHIVALRY.

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*Peerage claims were originally referred, not to the House of Lords, but to the Earl Marshal's Court—Cases : Dacre (of the North) ; Willoughby d'Eresby ; Powys ; Lisle ; Abergavenny ; Dacre (of the South) ; Offaly ; Clifford ; Mountjoy ; Beaumont ; Berners ; Roos ; Wahull ; Earldom of Oxford—Treatment of Fitzwalter and Berners claims—The Earl Marshal's Court and the heralds.*

The object of this paper is to establish the fact,—which appears to be little if at all known,—that under Elizabeth and James I the recognised *forum* for the trial of claims to peerage dignities, on reference from the Crown, was not, as is generally supposed, the House of Lords, but the Earl Marshal's Court, or 'Court of Chivalry.' This proposition, if established, will involve two corollaries : (1) that in these cases the jurisdiction of the House is not "inherent" but "delegated ;" (2) that James I has been wrongly charged with neglecting to provide, when he created the degree of Baronet, any court in which claims to baronetcies could be tried; for a court existed with a recognised jurisdiction over titles of honour.<sup>1</sup>

<sup>1</sup> Mr. Pixley (*History of the Baronetage*, p. 126) writes : "He bequeathed everlasting unrest to his new Degree, not only by this means, but by his failure to appoint any officer or Court to have cognizance of its affairs, or otherwise to provide it with some defence of its own against the caprice of monarchs and the encroachments of impostors." But there can be little doubt that his reference in the Commission of Nov. 18, 1614, to "such usual rules, custome, and lawes..... as other Degrees of Dignity Hereditary are ordered and adjudged" (*Ib.* p. 133) alludes to the Marshal's jurisdiction. Indeed, in the case of Sir Thomas Harris, Bart. (1662), the King directed the Earl Marshal that proceedings should be "according to the custome and usage of the Court Marshall."

Our latest authority, Sir F. Palmer, writes that "There is abundance of authority as to the proper mode of proceeding on peerage claims," and proceeds to cite three cases *temp.* Henry VI, and two *temp.* Elizabeth. He then adds :—

The forms of procedure adopted in the above-mentioned claims has (*sic*) been followed in a great number of subsequent peerage cases, and in almost all the Crown, where any doubt as to the validity of the claim has arisen, has taken the course of referring the matter to the House of Lords for its opinion and advice.<sup>1</sup>

But, on the writer's showing, "the forms of procedure" in the cases he cites were not uniform ; for under Elizabeth the Willoughby claim "was referred by the Queen to Lord Burleigh and other Commissioners," while Lord De la Warr's petition "in regard to his precedence in Parliament" was "referred to the House of Lords." Moreover, of the five cases cited, two of those under Henry VI were disputes as to precedence, not "peerage claims," while the third was a claim for precedence, and the same criticism applies to the case of Lord de la Warr.<sup>2</sup>

My point, however, is that no mention is made of the jurisdiction of the Earl Marshal or of the Court of Chivalry.

Mr. Pike observes that—

<sup>1</sup> *Peerage law in England*, (1907), pp. 9-10.

<sup>2</sup> See Cruise's remarks below, and cf. Pike, *Constitutional History of the House of Lords*, pp. 125, 128-9. The precedence of peers *inter se* was essentially a matter for the House to decide. In the *Arundel v. Devonshire* case cited by Sir F. Palmer, the judges, to whom the House had wished to refer it (*temp.* Hen. VI), declared that it was "matter of parlement longyng to the kynge's highnesse and to his lords spirituall and temporell in parlement by theym to be decyded and determyned." (*Rot. Parl.* v, 148).

Claims of peerage and offices of honour have long been brought before the House of Lords, but not without express reference from the Crown. It does not appear that the Crown is bound to accept this mode of decision, for in the case of the barony of Fitz-Walter.... the claim, though originally referred to the House of Lords, was, after a prorogation of Parliament, withdrawn from their cognizance and laid, by the King's direction, before the Privy Council.

... The jurisdiction is thus not inherent in the House of Lords itself, but is only created, from time to time, as occasion may arise.<sup>1</sup>

Sir F. Palmer holds, on the contrary, that

The jurisdiction of the House of Lords is not confined to cases in which a peerage claim is referred to the House by the Crown.

The House of Lords has an inherent jurisdiction as guardian of its own privileges, to determine who are its members, etc., etc.<sup>2</sup>

The evidence which I shall produce seems to be against this view and to support that of Mr. Pike. For the question whether a man was a peer could clearly be tried by the Marshal's court and decided, on report, by the Crown, without consulting the House of Lords.

Cruise alone, it would seem, among peerage writers, realised and definitely asserted, as to claims to peerage dignities, that

the court to which the crown usually referred such claims was that of the high constable and earl marshall, where cases were determined by the rules and customs of chivalry.<sup>3</sup>

<sup>1</sup> *Op. cit.* pp. 285-6.

<sup>2</sup> *Op. cit.* p. 11.

<sup>3</sup> *Op. cit.* (1823), chapter vi, sections § 1. *et seq.*

To Cruise I am indebted for the extract from the *Nobilitas Politica* of Milles, which, having been published in 1608, affords important evidence on the practice of his time.

For the disciding of sutes concerning honours, and for the preservation unto every man the right of his fame or dignity, the natural tribunal, seat, or court, for the nobility is everywhere called by this name, *Militaris*, that is to say, the marshall or military court, and commonly the court of chivalry: the form whereof with us is this — the appointed place for the holding thereof is the King's hall, wherein the constable of the Kingdome, and the marshall of England, sit as judges; where any plaintiff, either in cases of dignities or armes, may sue the defendant.

It is also duly pointed out in Cruise's work (§. 10) that—

When the office of earl marshal was in commission, claims to dignities were usually referred to the commissioners, though in the following instance a claim of this nature, *but which was in fact only a case of precedence*,<sup>1</sup> was referred to the House of Lords.

But, as his list of cases is very imperfect, and the details not always accurate, I have here compiled a fuller list, and corrected some of the errors of fact made by himself and others.

It would be possible to compile an even fuller and more instructive list if the records of the Earl Marshal's court, in the custody of the College of Arms, were open to the public. It is much to be desired in the interest of students of peerage law that the evidence contained in these records should be dealt with in a monograph on the subject.

<sup>1</sup> This was the De la Warr case (see p. 60 above). The italics are mine.

Mr. Wymbish's case, which Cruise cites for the answer of the chief justices to Henry VIII,—

That the common law dealeth little with titles and customs of chivalry, but such questions had always been decided before the constables and marshals of England is known to us, only, unfortunately, from the references made to it in later cases, which themselves are only reported in *Collins*. It will be safer, therefore, to begin with the reign of Elizabeth.

#### DACRE (OF THE NORTH)

In this well-known case, on the death of Lord Dacre in 1569, leaving three sisters his heirs, the title was assumed by Leonard Dacre, the heir-male. The Earl-Marshal declined to adjudicate, as having a personal interest in the rights of the heiresses, and commissioners were therefore appointed to act for him.<sup>1</sup> These decided the case against Leonard Dacre.

#### WILLOUGHBY D'ERESBY (*bis*)

The Duke of Norfolk, Earl Marshal, having been attainted, the claim of Richard Bertie to this barony *jure uxoris* was referred to three Commissioners for the office in 1572, as was that of Peregrine his son to the barony, on his mother's death in 1580.<sup>2</sup>

<sup>1</sup> The Earls of Northampton, Pembroke, Arundel and Leicester. (Harl MS. 4798, fos. 24, 29).

<sup>2</sup> See the paper on "The Willoughby d'Eresby case and the rise of the Berties." The Commissioners were Burghley, and the earls of Sussex and Leicester.

## POWYS.

The claim of Henry Vernon to this barony was referred to the same lords—with the exception of Sussex, who had died the year before—in 1584. “Those two lords join in a letter, dated September 22, 1584, to Cook, Clarencieux (Garter being then vacant), and Glover, Somerset herald, requiring them to examine into the proof of Mr. Vernon’s claim.”<sup>1</sup>

## LISLE.

One hesitates to include the following case, because it was only a petition for favour, not a claim of right. It is, however, somewhat parallel to the Mountjoy and Beaumont cases which came before the Earl Marshal eight years later.

The famous but anomalous barony of Lisle was the subject of this petition from Sir Robert Sidney, in 1598, as at that time “the next heir masle.” Although so much has been written on the dignity, it seems to have escaped notice.

My humble sute by your Lordship as Earle Marshall of England unto her Majestie is that it will please her to bestow upon mee the name and place of Lord Lisle, w<sup>ch</sup> sute I trust will not seeme unseemlie or arrogant since I require but that which hath (as I have set down) bin so often granted unto my Ancestors, [there] being also in it no discontinuance, myne Oncle who last possessed it but nine yeers agoe disceased.

As also that I pretend no right, but onlie hold myself inabled by neereness of blood to beseech that grace and favour of her Majestie as in like cases divers of my ancestors have obtained etc.

<sup>1</sup> *Collins*, p. 403.



To the Earl of Essex.<sup>1</sup>

In spite of Sir Robert's plea that he was the nearest "heir masle," he was so only to his *father* (since the decease of his elder brother, the famous Sir Philip, without male issue), while his only connexion with the Lords Lisle was through his *mother*. To her brother, Ambrose Dudley (d. 1590), who had been made Lord Lisle by a new creation, he was neither heir male nor heir general. Nevertheless, he petitioned, we see, not only for the barony of Lisle, but even for its former precedence ("place"), though he confessed that a lower precedence would content him. Five years later he was made Lord Sydney of Penshurst, and in 1605 he received a Viscountcy of Lisle.

#### ABERGAVENNY.

The most famous, perhaps, of all ancient peerage cases is that of the barony of Abergavenny. Collins devoted to it no fewer than 80 pages out of 415 in his book ;<sup>2</sup> it is discussed at length in the *Lords' Reports on the Dignity of a Peer*,<sup>3</sup> and it is also discussed by Sir Harris Nicolas as a claim to barony by tenure.<sup>4</sup> Cruise gave what he supposed to be the facts,<sup>5</sup> and our latest authority, Sir Francis Palmer, also gives them briefly,<sup>6</sup> and further mentions that Doddridge's great argument in the case developed into a book which has been repeat-

<sup>1</sup> Letter in State Papers, Domestic.

<sup>2</sup> *Proceedings..... concerning baronies* etc. (1734), pp. 61-140.

<sup>3</sup> *First Report* (1820), pp. 434-444.

<sup>4</sup> *Barony of L'Isle*, (1829), pp. 384-391.

<sup>5</sup> *Dignities* (1823), pp. 45-49.

<sup>6</sup> *Peerage Law in England*, pp. 181-2.

edly referred to in peerage cases as if it were a work of authority.<sup>1</sup>

Between them all they have left the facts in almost inextricable confusion. Once again one is startled by the contrast between the methods of the historian and the mere muddle of the law. The former would not dream of dealing with his subject until he had classified his evidence and assigned it to its right dates : to the lawyer, apparently, this preliminary is a quite superfluous proceeding. What, after all, does it matter to him what the facts really were ? Accordingly we read in the *Lords' Reports* that in this case " the proceedings began by a Petition of Edward Nevile to the King " (James I), in 1605 (*sic*), claiming the dignity,<sup>2</sup> and it is further asserted that

A right to be summoned to Parliament by reason of tenure of any land denominated at any time a Barony, does not appear, by any document which the Committee have discovered, to have been asserted in the reign of Edward the First or in the reign of any of his successors, till the claim made by Edward Nevill to be summoned to Parliament by writ, in respect of his possession of the barony of Abergavenny, in the reign of James the First.<sup>3</sup>

At about the same time Cruise alleged that " Sir Thomas Fane, having married Mary, the only daughter and heir of the Lord Abergavenny, claimed in 1604 (*sic*), the barony of Abergavenny in right of his wife,"<sup>4</sup> and that " the claims of Sir Thomas Fane and Mr. Neville to the barony of

<sup>1</sup> *Ibid.*, p. 24.

<sup>2</sup> *First Report* (Ed. 1829), p. 436.

<sup>3</sup> *Third (1822) Report* (Ed. 1829), p. 100. This Report is known to have been Lord Redesdale's work.

<sup>4</sup> *Dignities* (Ed. 1823), p. 45.

Abergavenny, in the same reign (James I), were referred to the house of peers."<sup>1</sup> Sir F. Palmer, who devotes some attention to Doddridge and the authority of his writings (pp. 24-5), observes that "the principal memorial we possess of his work is his argument in the *Abergavenny* claim, 1605 (*sic*), in favour of peerages by tenure set out in Collins' *Claims*, p. 97 *et seq.*," and points out that this argument, in subsequent editions, "has been repeatedly referred to in peerage cases as if it were a work of authority." He also dates the Abergavenny case throughout as 1605 (or 1604) and as of the reign of James I.

All these writers rely on "Collins," who has jumbled up the papers relating to this famous case. Now we have only to glance at his work to discover, on the first page of his report, Sir Thomas Fane referring to "the *Queen's* most excellent majestie, his gracious sovereign," while Serjeant Doddridge, on behalf of his client, Edward Nevill, similarly refers, on the first page of the argument dated "1605" by Sir F. Palmer, to "the *Queene's* most excellent Majestie," as also, on the next, to "her Majestie, God's substitute on earth."<sup>2</sup>

How then can these documents belong to the reign of James I? Nay, more. As Sir Thomas Fane died early in 1589 and his father-in-law, Lord Abergavenny, early in 1587, his claim must obviously fall between these dates.

In this case, then, as in Richard Bertie's claim to the barony of Willoughby, the writers have

<sup>1</sup> *Ibid.* p. 253.

<sup>2</sup> Fane's Case, I may explain, covers pp. 61-96; Doddridge's argument begins on p. 97.

altogether misdated the documents given by Collins which relate to the original claims. And this illustrates, as I have urged, the carelessness of legal writers as to facts and dates. The historian tries to be sure of both before he deals with his document, for he knows how much depends on the critical treatment of his evidence. In the Abergavenny case the error affects the date at which, it is alleged,<sup>1</sup> barony by tenure was first formally propounded as a doctrine ; the date at which a barony was still claimed by "the curtesy ;" and the date at which the marshal's court was the recognised *forum* for dignities. For both the original claimants recognised, as a matter of course, that this was the court before which their rival claims would come.

Let me then endeavour to explain, apparently for the first time, the real course of proceedings in this memorable contest. Even the stubborn and similar contest for the Earldom of Mar in our own time (1866-1885), which was similarly ended by a kind of compromise, was of scarcely longer duration.

The essential point to bear in mind is that issue was joined on *three* separate occasions, between each of which was a considerable interval of time. Henry (Nevill), Lord Abergavenny, died on or about 10th February, 1587, (1586/7) leaving as his heir-general an only child, Mary, wife of Sir Thomas Fane, and as his heir-male, Edward Nevill, his uncle's son, who inherited, under a family entail, Abergavenny Castle and the other estates.<sup>2</sup>

Thereupon the question arose as to who was

<sup>1</sup> See p. 76 above.

<sup>2</sup> He took under an Act of 2 and 3 Philip and Mary in spite of his father's attainder.

entitled to the peerage barony. The rival claimants were Sir Thomas Fane, the husband of the heir-general, and the above Edward Nevill. Early in December, 1588, their respective cases were in the hands of Burghley,<sup>1</sup> and on the 17th January following we find a memorandum among his notes : " The title of Abergavenny to be tried between Lady Fane and Edward Nevill. "

It is to this, the first contest, that belongs the first Abergavenny document printed by Collins, viz. " the right and title of Sir Thomas Fane " etc. (pp. 61-96). The whole document is of one date, and it is important to observe that it speaks of the rival claimant as " Edward Nevill now of Bergavenny " (pp. 63, 82), and shows him to be the *elder* Edward, not his son, who was afterwards the claimant. Sir Thomas had two points to establish: (1) that his wife was entitled, as heir-general, to the dignity ; (2) that he himself was entitled to it in her right, as " tenant by the courtesie of England " (p. 62). That his claim would come before the marshal's court he seems to have taken for granted.

Forasmuch as the state of this challenge and claim is for the title of a barony, being a matter of nobility and chivalry, ... the high constable and marshal of England the usual judges thereof in time past.....

That the question touching the barony of Bergavenny is not determinable by the common laws of this realm may well be proved by sundry presidents (*i.e.* precedents) of pleadings in the like cases, usually wont to be heard

<sup>1</sup> *State Papers Dom., Elizabeth*, Vol. ccxix, No. 8, Dec. 3, 1588 : " Statement of the title of Mr. Edward Nevill to the barony of Burgavenny ; " No. 7, Dec. 7, 1588 : " A treatise setting forth the title of Mary, " etc., etc. See also Nos. 16-22.

and determined in the court of chivalry before the high constable and marshal of England.

Such questions, he pointed out, were not to be tried "by juries:" there was evidently no idea then that the *forum* for them was the House of Lords.

The reason why this first contest for the dignity was never determined may now be explained. Both claimants, by a strange coincidence, died within a few weeks of each other—Edward Nevill 10th February, 1589 (*i.e.* 1588/9) and Sir Thomas Fane 13th March, 1589 (*i.e.* 1588/9)<sup>1</sup> just as the case, apparently,<sup>2</sup> was about to be tried.

For the long space of nearly ten years nothing more was done. But Edward Nevill the younger seems to have assumed the title, and Lady Fane, Sir Thomas' widow, eventually petitioned the Queen for the recognition of her right, complaining of Edward's assumption.<sup>3</sup> This resulted in a notable illustration of the earl marshal's jurisdiction. The Earl of Essex, as earl marshal,<sup>4</sup> formally summoned, by his letters, of 20th November (1598), both parties to appear before him.

The pursuivant who took his letter to Edward Nevill drew up an excellent report of the hearing of the case,<sup>5</sup> which begins as follows:—

On Saturday, 25th of November, 1598, my Lord

<sup>1</sup> See *Northamptonshire Families*, p. 95, where Mr. Barron decides that this was the true date.

<sup>2</sup> See p. 79 above.

<sup>3</sup> Harl. MS. 4798, fo. 1. The position has some similarity to that of the Duchess of Suffolk, in 1570, complaining that Lord Willoughby of Parham, the heir male, was alleged to be entitled to her own barony of Willoughby D'Eresby.

<sup>4</sup> He had been made earl marshal 27 December 1597.

<sup>5</sup> There is a transcript of it in Harl. MSS. 4749, 4798, which are bound up together. The folios are somewhat disarranged.

Marshall sat in Essex House to hear and to determine the Title and Claime of the Barony of Abergevenny descending between Mr. Edward Nevill Esq., heir male to the said house on the one Partie and the Lady Mary Vane heir generall etc.

The Earl Marshall called to his Assistants (*sic*) the Earl of Rutland, the Earl of Cumberland, the Earl of Sussex, the Earl of Tomond, the lord Montjoy, the lord T. Howard of Walden, the lord Buckhurst, the Lord Chief Justice of England and the Lord Chief Justice of the Common Pleas. All these sat above, and beneath at the Table (right underneath my Lord Marshall) was Mr. Garter and Mr. Clarencieux, Kings of Armes, the Lord Henry Howard, Lord Audley, Lord Burghley, Sir Robert Sidney, Sir George Carew, Sir Edward Hobby, and sundry other Knights and Gentlemen. Which for press of people I could not see (the same being so.....) and a number of others which I did not know.

Serjeant Williams—who was afterwards, as Sir David Williams, a well-known judge—was counsel for the heir-male; “Mr. Attorney of the Court of Wards” appeared for Lady Fane; and Coke himself, as Attorney General, represented the Crown. He had not merely a “watching” case: the Queen seems to have been deemed a third party to the suit. The whole report is well worthy of being edited by a peerage lawyer, but here I can only touch on two interesting points. In the first place Serjeant Williams insisted on the necessity of a baron holding thirteen knight’s fees, and there was even some debate on such constituents of a knight’s fee as hides and carucates of land, on £20 a year as its value, and on the number of fees, 13½, 15, or 20, required to constitute a barony. Lady Fane,

it appears, expressly claimed that she held 20. The citation of a case from 42 Edward III by Serjeant Williams further illustrates the importance he attached to tenure. The second point is one that does not emerge at all in the paper preserved by Collins. It is that, conscious of a weak case, counsel for Edward Nevill did not so much insist upon his right as plead for his "acceptance" by the Queen as the person best qualified to be Lord Abergavenny.

The hearing was adjourned, and the Earl Marshal sat again, also at Essex House, 15th February, 1599 (1598/9),<sup>1</sup> observing at the close of the sitting "I will relate unto her Ma(jes)tie with all care and diligence whatsoever hath been here said, and I doubt not but my Honble Assistance (*sic*) will doe the like." Three days later he sent Clarencieux King of Arms with certain questions to the two Chief Justices, who both, as we shall see, answered them emphatically in favour of the heir-general.

Nothing further was done, however, till a new sovereign had come to the throne, when the heir-general petitioned anew (Harl. MS. 1877, fo. 45 ink).

Petition to James I by Mary dau. & heir of Lord Abergavenny claiming to be "Baronesse of Bergavenny." ..... "And wher also upon petition exhibited by the sd. suppliant unto the late Queenes Majestie deceased for the allowance of this her title and name of dignitie, yt pleased her Majestie to referr the examination of this her claime unto the right hon<sup>ble</sup> the late Earle of Essex,

<sup>1</sup> In the interval Lady Fane's allegations had been exemplified by Dethick, Garter, at the College of Arms 15 Dec. 1598 (Harl. MS. 5019, 34d).



Earle Marshall of England, willing him to call unto him for his assistance the two Lord Cheife Justices of England, unto whome upon the full examinacion and discussing thereof the sd. suppliant's title to the honour and dignitie was made sure and indubitable as by their several opinions afterward sent unto his Lordship and hereunder set downe most plainly appearith etc. etc.

18 Feb. 1598 (*i.e.* 1599).

My Lord of Essex Earle Marshall of England sent Clarentieux unto Sir John Popham knight, L. Cheife Justice of England and unto Sir Edmond Anderson, knight, Lord Cheife Justice of the Common Pleas with this question.

"Whether he may not signifie unto her Majestie that the disposition of the Lord Bergavenny resteth wholly in her gracious will and pleasure.

Wher as the heir is collateral and so farr removed and the heir generall incapable in respect of her sex, and the entaile of the lands confirmed by Parliament to the heir male."

The answer of the Lord Cheife Justice of England :

"No right at all in the heire male and therefore he must wholly rely upon the favour of the Prince.

The Common custome of England doth wholly favour the heir generall.

The heir generalls issue to have precedence when both shalbe summoned as in Dacre Lord Willoughby. (*sic*)<sup>1</sup>

That her Majesty may call by new creacion the heire male and omitt the heir generall during her life, but yet a right to continue to her sonne having sufficient supportacion.

No entaile can carry away dignitie, but by expresse worde or patente."

The answer of the Lord Cheife Justice of the Common Pleas.

"The heire male hath no right so long as any issue doth continue of the heire generall.

<sup>1</sup> This refers to the double dignities of Dacre of the North and Dacre of the South and of Willoughby d'Eresby and Willoughby of Parham.

In his opinion, after the death of the mother, being incapable in respect of sex, there is a right in the sonne.

The intaile doth not prejudice the heire generall or her sonne."

Edward Nevill, on his side, also petitioned the King, who, in this case, referred the petition to the House of Lords. It may well be asked why he should have done so if it was then the recognised practice to refer such cases to the Marshal's court. The answer is simple. Nevill, in his petition, expressly prayed that it might be referred to the House of Lords, adding that it had been the practice of Queen Elizabeth and her predecessors so to refer such cases.<sup>1</sup> It is difficult to imagine a more audacious statement in view of the fact that his own claim, and that of his father, to the dignity had both been referred by Elizabeth to the earl marshal's jurisdiction, and that his own counsel, we have seen, had expressly stated, in his case, that the marshal's court was the recognised *forum* for such claims!<sup>2</sup>

Nevill's motive in wishing his claim, on this occasion, to come before the Lords may have been partly due to the answer of the judges, when consulted by the earl marshal, having been so emphatically against him, and partly to the hope that the high precedence which went with the Abergavenny title would be more readily conceded by the Lords to a Nevill than to the Fanes;<sup>3</sup> the more so as the entail of the Abergavenny estates on him-

<sup>1</sup> *Lords' Journals*, ii, pp. 274, 345.

<sup>2</sup> See p. 78 above and cf. 'Collins,' p. 98.

<sup>3</sup> See p. 41 for Mr. Barron's view that the Fanes, as a comparatively new family, would be considered unequal in social position to the Nevills.

self enabled him to keep up the family position.

His petition, thus referred to the House, first appears on its journals 5th April, 1604, and its hearing was appointed for April 12th. After repeated adjournments and reports to the King, the controversy, as is well known, was finally settled by a compromise, Edward Nevill being summoned by writ as Lord Abergavenny 25th May (1604) and Lady Fane receiving, the same day, letters patent which awarded her the barony of Le Despencer.<sup>1</sup>

It will be, probably, sufficient illustration of the extraordinary inaccuracy, in the Abergavenny case, as to facts and dates, that the Lords' Committee, with this evidence in their own Journals before them that the long controversy was ended at last by the documents of 25th May, 1604, asserted that it *began* "in 1605;"<sup>2</sup> that according to Cruise "Sir Thomas Fane . . . . claimed, in 1604, the barony of Abergavenny," although he had been dead, at the time, fifteen years; that, according to the same learned writer, "the case was referred to the house of lords," and yet "it appears from a MS. in the Harleian Collection, No. 1749 (*sic*) that this case was heard before the earl of Essex as earl marshal," etc.,—the facts being, as we have seen, that this hearing was not in 1604, but in 1598, and is dealt with in Harl. MS. 4798, not 1749; and that Sir F. Palmer similarly makes Sir Thomas Fane claim against "Sir (*sic*) E. Nevill" in 1604 (pp. 181-2), and dates Doddridge's "argument on the Abergavenny claim, 1605" (p. 24).

<sup>1</sup> *Lords' Journals* ii, pp. 346-8.

<sup>2</sup> See p. 76 above.

The quite exceptional reference, in this case, to the House of Lords did not, we shall find, affect the practice of referring such claims to the earl marshal or to the commissioners who executed his office. Indeed, in this very instance "the Commissioners for causes belonging to the office of Earl Marshal of England" (to give them their full title<sup>1</sup> had some voice in the matter, for to them was referred, 25th May, the burning question of the precedence *inter se* of Abergavenny and Despencer. The Commissioners<sup>2</sup> reported May 27 (1604) that they "did, with one voice, adjudge and determine" the question in favour of Despencer,<sup>3</sup> and, in spite of Nevill's strenuous opposition, the House, which had referred the question to their decision, confirmed it on July 6, and again on a subsequent occasion. The fact of the reference is the more remarkable because precedence in the House itself is a matter which the Lords themselves have usually decided and also because the decision may involve the whole *status* of a dignity. Sir F. Palmer observes, we have seen, that

The House of Lords has an inherent jurisdiction, as guardian of its own privileges, to determine who are its members and what is their precedence *inter se*; and inasmuch as this precedence depends on ancientry what is their ancientry,<sup>4</sup>...

And in another place he points out that the House "has indirectly the power of enforcing its own decisions and declarations of the law," should

<sup>1</sup> *Lords' Journals*, ii, p. 346.

<sup>2</sup> The Earls of Nottingham, Suffolk, Worcester and Northampton.

<sup>3</sup> *Ibid.* p. 347.

<sup>4</sup> *Peerage Law in England*, p. 11.

it come into conflict with the Crown concerning a dignity, by assigning it precedence only as a new creation.<sup>1</sup>

In the Abergavenny case, it is pointed out by the Lords' Committee in their first Report, the assignment to Abergavenny of a precedence below that of Despencer must be held to imply that it was created subsequently to the writ of summons addressed to Hugh le Despencer (1264) and was consequently not, as Nevill claimed, a barony by tenure. For the tenure of Abergavenny castle could be traced further back than 1264.<sup>2</sup> Sir Harris Nicolas appears to have taken the same view, though he, like the Lords' Committee, recognised that this conclusion made the whole case absolutely anomalous.<sup>3</sup> He considered, therefore, that no definite conclusion as to barony by tenure could be deduced from the Abergavenny case, and this seems to be the view of Sir F. Palmer also; for he writes that "the question whether the barony of Abergavenny was or was not a barony by tenure was thus in effect avoided by a compromise."<sup>4</sup>

That it was a compromise, I agree; but the argument based on the relative precedence assigned to Despencer and Abergavenny seem to me fallacious. The Abergavenny dignity was expressly allotted to Nevill as an act of "restitution," which would carry with it the precedence enjoyed by the

<sup>1</sup> *Op. cit.* p. 21.

<sup>2</sup> *First Report* (Ed. 1829), p. 442.

<sup>3</sup> *Barony of L'Isle*, p. 390. As the only ground upon which Nevill could really oppose the Fane claim was that the barony was held by tenure, it was obviously an untenable position to say that he ought to have the barony and yet that it must not enjoy the precedence due to it if it *was* a barony by tenure.

<sup>4</sup> *Op. cit.* p. 182.

former lords. That precedence was a matter of usage, as with other ancient dignities, and did not represent any definite date. The only precedence which had to be then determined *de novo* was that of Despencer, and this was settled by ranking it immediately above Abergavenny, apparently with the idea of bifurcating the late peer's precedence.

It is definitely asserted in the *Complete Peerage* (I, 20-21, 230) that the Abergavenny Barony was on this occasion assigned "the precedency of 1392," but all that was actually done was to rank it below Despencer, and, as Nicolas observed, a precedence of 1392, the earliest he could claim under a *writ* to his ancestor, "would have placed him below many barons of whom," as a matter of fact, "he took precedence."<sup>1</sup> As a matter of fact he would be ranked, we find, *above* Zouche (1308) and Willoughby (1313) though actually *below* Clifford, a creation recognised as dating from 1299, and Fitzwalter (1295).<sup>2</sup>

My object, however, is to show that the decision of the (Earl Marshal) Commissioners as to the precedence of the two baronies was quite independ-

<sup>1</sup> *Barony of L'Isle*, p. 390.

<sup>2</sup> Transcript of Lords' Journals, 2 March 1511/2. Accordingly, when Henry Clifford was summoned, in error, *v. p.* as Lord Clifford in 1628, "he was placed next above the baron of Abergavenny, the ancient seat belonging to the barony of Clifford" (*Collins*, p. 308), the barony of Fitzwalter being then merged in the earldom of Sussex. When that barony emerged and was allowed to Mildmay in 1670, its precedence raised difficulty. Lord Fitzwalter, in virtue of the 1295 writ, "claimed precedence of all barons now sitting as barons, particularly of the Lord Abergavenny, and alleged a determination in Henry VIII's time, whereby he was placed next below the Lord Clifford." (*Lords' Journals*). His claim was opposed on behalf of the representatives of Mowbray, Percy, Abergavenny, Audley, and Berkeley, and he was eventually placed as "the last baron of the reign of King Edward I" (*Ibid*). Unless the precedence allowed in 1604 was purely traditional, it can only have been based on the view that the first Lord Abergavenny was John Hastings, who appears in the Barons' letter to the Pope (1301) as "dominus de Bergavenny."

ent of, and irreconcilable with the result of the Abergavenny claim in the Lords, and has been held to have a grave bearing on the real question at issue, namely, whether the dignity was a barony by tenure or not.

DACRE (OF THE SOUTH) (*bis*)

This case was largely contemporary with that of the barony of Abergavenny. In the *Lords' Reports on the Dignity of a Peer*, there is no mention of any claim under Elizabeth,<sup>1</sup> and the case is only slightly dealt with. Cruise tersely recites the successive claims of "Margaret, the sister and sole heir to Gregory Lord Dacres,"—one "in the latter end of the reign of Queen Elizabeth," and the other "in 1 James I"—with their treatment and result.<sup>2</sup>

He also, in another place, vaguely states, on the authority of Hargrave, that a claim was made "about 1604, by Sir Sampson Lennard, in right of his wife, Margaret, Lady Dacres."<sup>3</sup> So too Sir Francis Palmer asserts that "in 1604 a claim was made by Sir Sampson Lennard to the dignity of a baron in right of his wife Margaret, Baroness Dacres," etc.<sup>4</sup>

Here again the sequence of events has to be reconstructed *ab initio*. Gregory, Lord Dacre of the South, left at his death (26 Sept. 1594) a sister and sole heiress, Margaret, wife of Sampson

<sup>1</sup> *Third Report* (1822), p. 217 (Ed. 1829).

<sup>2</sup> *Op. cit.* pp. 174-5.

<sup>3</sup> *Ibid.* p. 108.

<sup>4</sup> *Peerage Law in England*, p. 136.

Lennard. This lady petitioned the Queen that her claim to the barony might be referred to her "Majestie's special Commissioners for such cases already appointed."<sup>1</sup> It was duly referred to Burghley and 'the Lord High Admiral' (Lord Howard of Effingham), who are subsequently referred to as "the late right honourable commissioners for marshal causes."<sup>2</sup>

In the case of this barony there would seem to have been no heir-male to oppose the claim of the heiress and her husband. It is true that in the report on Lord Salisbury's MSS.<sup>3</sup> Richard Fienes is indexed as "claimant of the barony of Dacres (of the South)," but reference to his letter of 25th October, 1586,<sup>4</sup> shows that it is calendared as endorsed by Burghley: "Mr. Fynes letter for his title to the Lord Saye."<sup>5</sup>

This letter gives us the key to one six months later,<sup>6</sup> in which he informs Burghley that he has been to see Lord Leicester at Wanstead and was told by him "that for the Barony he had told her Majesty I had as good right unto it as his lordship had to his Earldom."<sup>7</sup> This 'Barony' could not be that of Lord Dacre of the South, who did not die till eight years later. He then passes to another subject, *viz.* "Lord Dacres' lands," which he

<sup>1</sup> Collins, p. 24.

<sup>2</sup> *Ibid.* p. 35.

<sup>3</sup> By the Royal Commission on Historical MSS. Vol. III, p. 478.

<sup>4</sup> *Ibid.* p. 185. This letter should be noted, for it is years earlier than any reference to his claim given by peerage writers.

<sup>5</sup> *i.e.* the barony of Saye, for which, in this letter, he claimed its ancient precedence.

<sup>6</sup> *Ibid.* p. 251.

<sup>7</sup> This was true. He was *de jure* Lord Saye, although he had assured Burghley in his previous letter that he would ever "acknowledge that both the honour and the place" (*i.e.* precedence).... come from her Majesty's undeserved favour."



asked Leicester to obtain for him "as the next heir male," but only as an act of grace.

While the heir-general had been making good her right to the barony, her husband had concurrently been claiming to hold the barony in her right. As early as 3 June 1596 we read of "Mr. Leonard's suit for barony of Dacres,"<sup>1</sup> and on November 26, 1598, Essex, as Earl Marshal, sent him his formal summons to appear before him at Essex House on the 29th, there to have his case heard. The fact here established is of considerable importance as proving that, ten years after Sir Thomas Fane had made his claim *jure uxoris*, and twenty-six years after Richard Bertie had made his similar claim, it was recognised that such a claim could still be properly advanced. A letter of Dec. 8 (1598) mentions that Essex "kept a marshal's court lately where the titles of Nevill that claims to be Lord of Abergavenny and Sir Henry (*sic*) Lennard, who would be Lord Dacre of the South were argued, but the matter was referred to the Queen."<sup>1</sup> But, as in the Willoughby d'Eresby and Abergavenny cases, Queen Elizabeth took no action.

Under James I the claim was renewed. The heir-general petitioned the King to refer her claim "unto the most honourable lordes commissioned by your Majesty for the hearing and determining of marshal causes," which was done<sup>2</sup>, and on Dec. 8, 1604—only some six or seven months after the settlement of the Abergavenny contest—the said

<sup>1</sup> *State Papers : Domestic.*

<sup>2</sup> S. P. Dom. Elizabeth, CCLXIX, No. 6.

Commissioners<sup>1</sup> reported in favour of her claim.<sup>2</sup> The next step was a petition by Sampson Lennard, her husband, that, as "the most honourable commissioners authorized by your Majesty for the office of the earl marshal..... have, according to right, settled in her and upon her children the said barony of Dacres," his own right to enjoy the style, title, and dignity of a baron in her right might be referred "to the said commissioners." The King referred it accordingly to "the Commissioners marshal," who reported that the precedents were in his favour. Meanwhile his wife died. Thereupon the King granted him a strange patent which recited that his wife "was, in her lifetime, in the same barony of Dacre by our ordinance invested, together with all honours," etc. ; that, upon the Commissioners' report, the King had intended to follow the precedents in his favour ; that, by his wife's death "and so by the immediate descent of the said barony upon her son,"<sup>3</sup> the King's purpose had been made frustrate ;" and that "out of our gracious consideration of his said former (*sic*) right," etc., the King granted him the precedence of "the eldest son of the lord Dacre of the south."<sup>4</sup> The date of this patent was April 2, 1612.

<sup>1</sup> The Earl of Dorset, the Duke of Lennox, the Earl of Nottingham, the Earl of Suffolk, the Earl of Worcester, and the Earl of Northampton.

<sup>2</sup> *Collins*, pp. 28-30.

<sup>3</sup> In accordance with the Willoughby D'Eresby precedent of 1580 (see p. 24).

<sup>4</sup> *Collins*, pp. 30-31. The absurdity of this recital is that if his wife had not died when she did, and Lennard had been recognised as Lord Dacre in her right, he would apparently have been liable to lose the title at any moment in the event of her death and his son's succession, which was opposed both to precedent and to Henry VIII's ruling.

## OFFALY

The case of this Irish barony came before the court at Whitehall, on the suit of Gerald, Earl of Kildare *v.* Sir Robert Digby and Lettice his wife, 4 Feb., '1604' (*i.e.* 1605). The *Complete Peerage* only states that Lady Digby "appears, about 1606, to have claimed, as heir general. . . . certain estates, as also the Barony of Offaly," and gives no particulars.

## CLIFFORD

After the death of George, Earl of Cumberland (and Lord Clifford) his widow

Margaret, countess of Cumberland, exhibited a petition to the commissioners for the office of earl marshal, setting forth that the King, upon perusal of her daughter's case for the barony of Clifford, had recommended the same to their lordships.<sup>1</sup>

This petition is assigned to "November 3, 1606,"<sup>1</sup> and it seems to have been overlooked. The *Complete Peerage* does not mention it, and Cruise asserts that on the two occasions when Lady Ann<sup>2</sup> claimed the barony, "her petitions were referred by his majesty to the house of lords."<sup>3</sup>

There is a double interest in these proceedings of 1606. In the first place the claim of Lady Ann affords a good illustration of the change of system. In 1606, we see, her petition<sup>4</sup> was referred by the

<sup>1</sup> *Collins*, p. 312.

<sup>2</sup> Lady Ann Clifford, the daughter.

<sup>3</sup> *Op. cit.* p. 195.

<sup>4</sup> *i.e.* through her mother.

King to the Earl Marshal Commissioners ; but when, in 1628, her claim was renewed, her petition was "by His Majesty referred to the lords."<sup>1</sup> For between these two dates the system of dealing with such claims had changed.

In the second place, the above proceedings afford, perhaps, the earliest instance of the doctrine of "attraction" in peerage law. For we read in *Collins* (p. 312) that

The case then had only this *quære*, as it seems by a brief in the manuscript at Lincolns Inn concerning this title, *viz.*, whether all or any of the said baronies be by virtue of the patent of Henry VIIIth creating Henry lord Clifford, earl of Cumberland, entailed upon the then earl (*viz.*, earl Francis) as appertaining to the earldom, or ought to descend in fee simple to the lady Anne as heir-general, and whether she be capable thereof, yes or no.

The records of the Earl Marshal's Court directly confirm this, and give the baronies as Clifford, Westmorland, and Vesci. They further record the order of the Court that the Earl of Cumberland should be summoned to defend his right.

It has hitherto been supposed that the first case in which this question arose was that of the barony of Roos ten years later, 1616, when that dignity was claimed both by the heir-general and by the Earl of Rutland. The point was even then sufficiently uncertain for the King to decide the matter by a compromise.<sup>2</sup>

### MOUNTJOY

We now come to two claims, or rather petitions,

<sup>1</sup> *Collins*, p. 313.

<sup>2</sup> *Cruise*, pp. 115-6.

in the same year (1606), singular for their total lack of any actual right. The first was that of Sir Michael Blount for the Barony of Mountjoy, which became extinct on the death of his kinsman, the Earl of Devonshire. A month later (4 May, 1606) his petition came before the court,<sup>1</sup> although he was only heir-male *collateral* of the grantee.

## BEAUMONT

On November 23, 1606, the Court received and considered the petition of Sir Henry Beaumont for the Viscountcy of Beaumont,<sup>2</sup> extinct a century before. He could similarly only claim to be heir-male *collateral*, and his "petition and case to be restored," which is printed in Playfair's *Baronetage*<sup>3</sup>, is a curious medley of reasons for the King's favour. The petitioner "notwithstanding anie claim which he could justly make unto the foresaid title and honour, humbly referreth himself wholly unto your gracious favour," and, though speaking of "his ancient right and dignitie," "referreth himself and all his titles unto your majesties grace, and shall think himself highly honoured to be a creature of your own handy worke, to be disposed of as in your princely favour shall be thought fit."

His claim, in the absence of legal right, may have been influenced by the success of Edward Nevill in the Abergavenny case, which was due to the king's favour and not to any real right.

<sup>1</sup> Records of the Earl Marshal's court.

<sup>2</sup> *Ibid.*

<sup>3</sup> Vol. i. (1811), p. 538. The State Papers (Domestic) of the date mention the claim, which may be compared with the Lisle petition (p. 74 above).

## BERNERS

The claim of Sir Thomas Knyvet to this barony was similarly referred by James I to the Commissioners Marshal, who <sup>1</sup> reported to the King in his favour.<sup>2</sup>

## Roos

It is alleged that on the death of Elizabeth, daughter and heir of Edward (Manners), Earl of Rutland and Lord Roos (or Ros), in 1591, "the lord Burghley, lord treasurer, the lord admiral, the lord Hunsdon, commissioners for the office of earl marshal, ordered that" her son, then an infant, should "be published by Garter King of arms to be lord Roos, which was done accordingly."<sup>3</sup>

In any case his right to the title was challenged in after years by Francis, Earl of Rutland, who eventually petitioned the King that his own right to it might be referred to the consideration of "your Highness' commissioners designed in the office of earl marshal and arms." The case was accordingly heard before them,<sup>4</sup> 27th April, 1616, and the King acted in the matter, after hearing their report, 22 July (1616).<sup>5</sup>

## WAHULL

The claim of Sir Richard Chetwode to a peerage

<sup>1</sup> The earls of Nottingham, Suffolk, Worcester, and Northampton.

<sup>2</sup> *Collins*, p. 350.

<sup>3</sup> *Collins*, p. 166.

<sup>4</sup> The earls of Suffolk, and Worcester, the Duke of Lennox, and the earls of Nottingham and Pembroke.

<sup>5</sup> *Collins*, pp. 162, 170, 172.

barony of this name was referred by James I to the Duke of Lennox, Lord Howard, and the Earl of Nottingham (who were among the Commissioners for Earl Marshal), and their report is preserved by Banks, from whose version succeeding writers on the peerage have derived their knowledge of it.

As the document in question figured prominently in the Wahull peerage claim of 1892, all that was known about it was then ascertained, and it proved to be very little.<sup>1</sup> No original could be found, and the copies (one of which is preserved among the "family papers") vary somewhat in their contents. I do not see, however, any reason for doubting that the claim was made and dealt with by the Earl Marshal Commissioners, though there may not be legal evidence of the fact. But it is difficult to determine the date.

#### EARLDOM OF OXFORD.

It is stated by Cruise<sup>2</sup> that when, on the death of Henry, Earl of Oxford (1625) a contest arose for his dignity "the case was referred by King Charles I to the house of lords." Eventually, indeed, it was so referred, but it seems to have been overlooked that this was a special measure and that in the first instance the case was referred to the earl marshal and other peers, by whom Lord Willoughby's claim to the dignity in question was actually heard,<sup>3</sup> 25 Feb. 1625/6.

<sup>1</sup> *Speech of Counsel*, etc., pp. 2-5, 7-9.

<sup>2</sup> *Op. cit.* p. 101.

<sup>3</sup> *Collins*, p. 174, from *Lords' Journals*. There is also an interesting letter from Robert de Vere (*State Papers: Dom. Charles I*, xix, 106), in which he refers to the Marshal's action).

Subsequently, Robert de Vere having petitioned that the question might be "determined by the lords in parliament," the King "seeing these petitions concern so great an honour and office of inheritance, and that it falls so opportunely during the sitting of our high court of parliament," resolved "to take the advice of our lords and peers of our higher house of parliament, who have the judges with them for their assistance in any point of law which may arise."<sup>1</sup> This seems to have proved the turning point in the treatment of claims to peerage dignities.

That the reference to the Lords was still an innovation is shewn by an interesting letter of Sir Benjamin Rudyerd, from Whitehall, 6th April, 1626, in which he writes: "Petition was made unto the kinge concerninge the Earledome of Oxford and the High Chamberlaynes Place. His Ma(jes)tie desired the Advise of the Lordes House; the Lordes are not to judge, but to give their Advise in these Causes, the Petition not being originally to the House, but to the Kinge, who hath only desired their Advise uppon it, retaining the judgement to himselfe."<sup>2</sup>

It is well known that, as late as 1670, Charles II asserted his prerogative by hearing the barony of Fitzwalter case in Council at Whitehall, and that, the King being satisfied, a writ of summons followed. But it is only right to point out that, in accordance with Sir F. Palmer's view, the House of Lords asserted its privilege by ordering Lord

<sup>1</sup> *Lords' Journals*.

<sup>2</sup> *State Papers: Dom. Charles I*, xxiv, 48.



Fitzwalter to sit in the lowest place until he had proved to their satisfaction his right to the place of the old barony. It seems, however, to have been overlooked that even George I, in 1718, referred a petition for the barony of Berners to the deputy earl marshal "to consider thereof, and report his lordship's opinion what may be fitly done therein," though it was also simultaneously referred to the Attorney-General.<sup>1</sup>

As the jurisdiction of the Earl Marshal is popularly confused at times with the duties of mere heralds, who are in consequence supposed to represent his powers, it would seem desirable to explain that it was, on the contrary, his function to keep the heralds in order and correct their armorial offences. This is particularly well seen, at the period we have been discussing, in the action of the Earl Marshal Commissioners on the charge brought by the Earl of Kent—

"That Garter principal King of armes, 36 Eliz. *reginæ*, did corruptly and against his own knowledge, contrive and publish under the seal of his office a false pedigree for George Rotheram "

with the intention of propping up a claim to the Barony of Grey de Ruthyn.

Thereupon, on June 22, 1597, as "wee William lord Burghley . . . . and Charles lord Howard of Effingham . . . . lawfully authorized by the Queen's most excellent Majesty Elizabeth, . . . . to hold and exercise the office of earl marshal of England," the commissioners "do determine and decree" that Garter is guilty.

<sup>1</sup> Collins, p. 369.

And therefore by the authority that we have of the office of earl marshal, and that specially being by our commission authorized with full power from time to time to call before us all officers of arms, both kings of arms, heralds and pursuivants, and to cause due inquisition to be made of all manner of arms by them given to any person, without good warrant,..... And, upon the examination and tryal thereof, to revoke and dissannul all such as shall be so tryed unlawfully assigned,..... By force of which authoritie wee do revoke and disannul the bearing of the said armes..... so quartered by the said George Rotheram, and do judge them to be unlawfully borne ; and do also determine that part of the pedigree made by Garter to be unlawfull, etc., etc.

So again a few years later (1605), in the Appointment of Commissioners for Earl Marshal 5 Feb. 2 James I (Pat. Roll, p. 23, m. 35d) we read that—

amongst other inconveniences of late yeares growne for wante of due regarde had to the accions of our Officers at Armes the Heralds and Kinges of Armes and Pursuivants of Armes wee are informed that divers errors are commytted by certayne Heralds now deceased and by some such as doe live to the dishonor of our nobillitie and chivalrye and to the disgrace of sundrie families of aunciente bloode bearinge the armes of their auncestors in assigninge and appointyng the auncient Armes Badges and Crestes of somme of our Nobillitie and Chivalrie and of other Gentlemen of auncient bloode to men that were and that bee strangers in blood to them and not inheritable thereto and likewise that for gayne and other affection the said Heralds have apoynted Armes Crestes and Badges for some other persons of base birthe or of meane vocation and qualitie of livynge that were meete for persons of good birth and linnage to receive honor either for service in polliticke governmente or in marshall accions which errors and disorders wee of our princelie

and Roiall dignetie from whence also inferior honors and dignities ought to be derived and protected myndinge to reforme uppon the certayne knowledge of your fidelities knowledges and zeale that you and every of you beare to the mayntenance of all states of our nobilltie and chivalry and of all gentlemen of true blood in their rights tytles and degrees as well for their Armes Crestes and Badges as for all other prehemynencies of righte by lawe of armes belonging to them and everie of them or to their children doe by theise presentes auctorice you or any six five fouer or three of you to exercise all accions belonging to the office of the Earle Marshall to all purposes and intents..... full pouer from tyme to tyme to call before you all our offycers of armes both Kinges of Armes Heraldes and Pursivants and to cause due Inquisition to be made of all manner of armes by them of late yeares given to any person withoute good warrante by the lawe of armes..... and uppon due examynacion and tryall thereof to revoke and disannull all such as shallbee soe tryed and founde unlawfullie and unworthelie assigned and given..... and further to consider of such good ordinaunces as hath byn by former Earles Marshallles or Constables of England for the direccion of the said Heralds in their severall offices and for the lymytacion of their auctoritie.

All this must be very distressing to poor Mr. Fox-Davies, who loudly asserts that "*nothing* can alter the fact that the officers.... of the College of Arms.... have the *sole* authority and control of armorial matters.... [are] the *sole* authority upon matters of arms." <sup>1</sup>

Dethick, the Garter, who was found guilty by the Commissioners for Earl Marshal in the Rotherham business, himself bore a name and arms to which he had no right whatever, just as Wriothesley, a

<sup>1</sup> *Armorial Families*, pp. viii, xxx.

previous Garter, masqueraded under a name wrongfully assumed. For the Dethicks "copying the example of the Wriths, attempted to impose upon the public respecting their family." <sup>1</sup> Dethick, on the other hand, charged Cooke, Clarencieux King of Arms, with being the son of a tanner, and asserted that "he was dissolute and abandoned and prostituted his office in the vilest manner for money." <sup>2</sup> When they were not certifying pedigrees for the *novi homines* of Tudor days, these heralds justified the statements above in the King's appointment of Commissioners by such revelations as these of one another's infirmities.

<sup>1</sup> Noble's *History of the College of Arms*, p. 164.

<sup>2</sup> *Ibid*, p. 169.

# THE MUDDLE OF THE LAW

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*The lawyer v. the historian—The authority of Coke—(1) “A CASTLE FOR THE NECESSARY DEFENCE OF THE REALM :”—The Lucas patent—Impartibility of serjeanties—Confusion as to grand serjeanty—(2) THE EARLDOM OF CHESTER CASE :—Coke’s doctrine of abeyance—Facts of the Chester case—The law as to homage—Alleged antiquity of abeyance—Tindal, C. J. on abeyance—The lawyer’s conception of “authority”—(3) THE DUKE OF BUCKINGHAM’S CASE :—Confusion of tenure with descent—Use made of the case in 1779—The case based on an erroneous allegation—The issue in the case—Rival reports of the case—Mr. Asquith’s confusion—(4) THE LORD ABERGAVENNY’S CASE :—Held to establish necessity of sitting under the writ of summons—Our dependence on Coke’s report—Its accuracy contested—Its statements are inventions—Its writ a concoction—Hypothesis as to the real issue—Barony by tenure the question—Coke’s authorities—His own “authority” worthless—“The record of Parliament”—Development of doctrine that sitting must be proved—The Frescheville case—The L’Isle case—the Meinill case—(5) THE BARONY OF CLIFTON CASE :—Held to establish descendibility of baronies by writ—Lord Redesdale’s attempt to limit its application—Maxim that the law was “always the same”—Criticism of that maxim—Importance of Clifton case over-rated—Its overlooked point—The Willoughby de Broke case—The Clifton decision traceable to Coke’s doctrine—Its retrospective application—This development historically wrong, but legally inevitable—Law cannot admit change or growth—The Earldom of Norfolk case—“The law was the same”—A convenient maxim—Its possible consequences—Doctrine of “ennobled blood”—Its retrospective limit—Date of first valid writs—De Ros and Despencer—The Hastings case—The Mowbray and Segrave case—The Wahull case—Sitting “referred” to earlier writ—The Fauconberg and Darcy de Knayth case—Proof of barony ‘jure uxoris’—The De Moleyns case—Parallel cases—Proof of Darcy sitting—Conclusion.*

It is not long ago that a learned judge, in the course of addressing a medical gathering, observed that there was this in common between their profession and his own : they both made sure of their facts before forming their conclusions. Now that is precisely what, in my experience, lawyers, dealing with the facts of history, resolutely decline to do. The historian and the lawyer, therefore, part company from the outset. There is no point, perhaps, upon which modern historians have been more uniformly insistent than the right use of their "authorities." The historian tests his foundations before he rears his structure ; the student is taught at an early stage to criticise and to classify his authorities, and never to forget that historical works—even those of the ablest men—are but commentary upon those authorities and are not "authorities" themselves.

To one who has been trained in these methods,—to whom they have become second nature,—his first experience of the lawyer's ways must come, surely, as a shock. From light he passes into darkness ; science is exchanged for superstition. That change and development are ignored and evolution an accursed thing are but minor peculiarities of the strange world he enters ; for what will surprise him more than all is that what is of most matter in the law is not to learn what the facts were, but what some bygone judge or writer supposed the facts had been. He will gaze in wonder on great intellects bowing themselves in homage before the blunders of the past, acute minds submitting to the fetish worship of "our

books " and helpless in the presence of what I have termed " the long ju-ju " of the law.

Strong language, it may be said ; but strong language alone can open my readers' eyes, can make them realise that the lawyer's methods are those of the Middle Ages, while those of the historian, as of the man of science, have left them centuries behind. It has been my fate to have to listen, upon more than one occasion, to learned law lords and King's Counsel, in the spirit of medieval schoolmen, gravely discussing a proposition of law which it never occurred to them to question, but which originated merely in the muddled mind of the luminary at whose shrine they worship.

In the spacious days of the Great Exhibition, Hallam,—his style attuned to the taste of that appalling age,—discussed the philosophy of the schoolmen, and insisted on the blighting effect of " authority " on those who, like the great lawyers of our time, " were men of acute and even profound understanding, the giants of their own generation. " The authority of Thomas Aquinas had " silenced all scruples as to that of Aristotle, and the two philosophers were treated with equally implicit deference by the later schoolmen. " Just in his somewhat sententious criticism, Hallam proceeded thus :

But all discovery of truth by means of these controversies was rendered hopeless by two insurmountable obstacles, the authority of Aristotle and that of the church. Wherever obsequious reverence is substituted for bold inquiry, truth, if she is not already at hand, will never be attained.

It is easy for a disillusioned age to smile at that *juventus mundi* in which the early Victorians believed themselves to be living and at the somewhat pompous gush in which they proclaimed its glories. But, allowing for this visionary optimism, Hallam was absolutely right when he denounced "authority" and its blighting effect upon the mind.

But this unproductive waste of the faculties could not last for ever..... What John of Salisbury observes of the Parisian dialecticians in his own time, that, after several years' absence, he found them not a step advanced and still employed in urging and parrying the same arguments, was equally applicable to the period of centuries. After three or four hundred years, the scholastics had not untied a single knot, nor added one unequivocal truth to the domain of philosophy..... How different is the state of genuine philosophy, the zeal for which will never wear out by length of time or change of fashion, because the inquirer, unrestrained by authority, is perpetually cheered by the discovery of truth in researches which the boundless riches of nature seem to render indefinitely progressive.<sup>1</sup>

The erection of that bar to research is an ever-present danger. Even in the field which one would have supposed to be absolutely free from that danger, namely, that of modern science, I remember a dogmatic attempt to deny the mysterious power of radium on the ground that it conflicted with Joule's Law. One is sorry for Joule, but no one's "Law" can be suffered to bar the way to the progress of human knowledge. The incident, however, showed us that even science has its bigotry.

<sup>1</sup> *The Middle Ages*, Chap. IX, part 2.



The object, however, which I have before me in this paper is the demonstration of the errors, the muddle, and the fearful confusion into which lawyers have been led by the practice they have inherited from the Middle Ages of relying upon the "authority" of this or that writer, instead of seeking to ascertain the facts for themselves and to learn upon what evidence the statements of that writer were based.

To establish this, I need not travel outside a single passage in the most famous and familiar of Sir Edward Coke's 'Institutes,' better known as 'Coke upon Littleton.' I shall, however, complete my case by dealing with a passage in his 12th Report. My reason for selecting the former passage—which is taken from the chapter "On parceners" and is cited as 165 a.<sup>1</sup>—is that it has figured somewhat prominently in three notable cases heard, of recent years, before the Committee for Privileges. Having been concerned in all three (as a mere antiquarian adviser) and consequently heard them argued in the House, my attention has been specially drawn to this passage. I have not picked it out as peculiarly susceptible to criticism, but simply because, for the reason I have given, it has been brought specially before me.

Let it not be said that I am killing the slain or merely 'flogging a dead horse.' The very reverse is the case. It is true, no doubt, that modern lawyers might hardly go so far as Blackstone and say that Coke's works have an "intrinsic authority in the courts of justice and do not depend on the

<sup>1</sup> In the 3rd book of the 1st part of the Institutes.

strength of their quotations from older authors." But it is also true that, as Chief Justice Best expressed it, "I am afraid we should get rid of a good deal of what is considered law in Westminster Hall if what Lord Coke says without authority is not law," and that "many of his doctrines were so firmly established by judicial decisions that no judge can now disregard them."<sup>1</sup> My special vindication, however, is that, in the latest work on the peerage law of England,<sup>2</sup> an eminent lawyer, Sir Francis Palmer, has taken up the cudgels for Coke and upheld his authority thus:—

Needless to say, his statement of the law and his opinions are entitled to the highest respect, for he is one of the chief oracles of our common law..... Even what Coke says, though without authority, is, as Eyre, C. J., remarks (2 Bing. 296, 297) accepted as law (*primâ facie*), so high stands his reputation. No man assuredly had a better right than he to stamp the legal currency.

In the Redesdale Committee Reports attempts are made, but without signal success, to disparage his authority on the strength of some slight inaccuracies.<sup>3</sup>

Again, in defending at some length Coke's statement of Nevill's Case against the Committee's criticisms, the learned writer observes (in a note) that

In like manner the Committee seek to treat the *Aberghavenny Case*, reported in 12 Co. Rep. as an invention of Sir Edward Coke; but the facts brought to light by Sir Harris Nicholas in his report of the *Lisle Peerage Case*

<sup>1</sup> I desire to acknowledge my indebtedness for this passage and for others bearing on Coke's authority to Mr. Macdonell's life of him in the *Dictionary of National Biography*.

<sup>2</sup> *Peerage law in England*, 1907.

<sup>3</sup> *Op. cit.* p. 24.

afford cogent evidence to show that there is no ground for such a reflection on Lord Coke's credibility.<sup>1</sup>

It was this passage that led me to include Lord Abergavenny's Case within the compass of this paper.

The year before this work was published the question of the effect on Coke's authority of the criticisms in the Lords' Committee's Reports had been raised before the Committee for Privileges in the Earldom of Norfolk Case (1906). Mr. Warmington<sup>2</sup> and Lord Robert Cecil, counsel for the Duke of Norfolk, impugned Coke's authority, on the strength of passages in those reports, upon two points. One was the famous *De Donis* question raised in Nevill's Case;<sup>3</sup> the other was the tenure of dignities by 'the courtesy of England.' The former was a purely legal question, with which I do not concern myself; the latter I have dealt with in the paper on the Willoughby d'Eresby case and refer to further below in connexion with the Fauconberg case (1903). Mr. Warmington, touching on both points, claimed that in the passage of the Lords' Reports discussing Nevill's case Lord Coke's "proposition is dealt with and I think successfully confuted."<sup>4</sup> Lord Robert went a little further and observed, speaking of Nevill's Case,—

<sup>1</sup> *Op. cit.* p. 200.

<sup>2</sup> Afterwards created a Baronet.

<sup>3</sup> See Palmer, *Peerage Law in England*, pp. 199-203.

<sup>4</sup> *Speeches delivered . . . . . on the claim to the earldom of Norfolk*, p. 97. In the following year appeared Sir Francis Palmer's work, claiming that "in the result, the Committee fail to dispose of or discredit *Nevill's Case*, and that case must therefore be taken still to express the law." (*Op. cit.* p. 203). Between these two very eminent King's Counsel I do not presume to intervene.

I do not wish to say anything disrespectful to Sir Edward Coke, but..... there are a variety of passages in the 'Third Report on the Dignity of a Peer' pointing out that Sir Edward Coke was not a trustworthy authority on Peerage matters, that he more than once made statements which could not be relied upon in connection with Peerage matters..... He applied all the rules of real estate, and the Committee of your Lordships' House even suggested that he had invented facts which were necessary to establish that proposition, though I should not venture to say so, etc. etc.<sup>1</sup>

This led, at a later stage, to a protest from Sir Robert Finlay, who had appealed to the authority of "so very eminent a lawyer as Lord Coke,"<sup>2</sup> and it was now Lord Halsbury's turn to appeal to the Reports.

*Sir Robert Finlay.* "My learned friend Mr. Warmington, and, in a less degree, I think, Lord Robert Cecil, spoke in a somewhat disparaging way of the authority of Lord Coke, and it may be that the authority of Lord Coke, at one period of our legal history, was exaggerated, but I confess that I was somewhat startled to hear Lord Coke treated as if his authority on the matter of peerage law were practically nil."

*Earl of Halsbury.* "I think there were some reflections upon it in that 'Report on the Dignity of a Peer'."

*Sir Robert Finlay.* "There are, my Lord."

*Earl of Halsbury.* "It is not Lord Robert Cecil. He is rather fortified in what he said by what appears in the Report in which certain observations are made about the accuracy of Lord Coke."

*Sir Robert Finlay.* "There are certain passages in the 'Report on the Dignity of a Peer' with regard to the point of descent to heirs female, which I shall ask your Lordships very respectfully to consider."

<sup>1</sup> *Speeches*, etc., p. 124.

<sup>2</sup> *Ibid.* p. 35.

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*Earl of Halsbury.* "All I meant was that I think Lord Robert Cecil is justified upon that particular matter by an authority now of considerable weight, I think it is more than 80 years of age."<sup>1</sup>

Sir Robert then proceeded "to vindicate the accuracy of Lord Coke" with regard to "tenure by courtesy" and was able to show that his attitude with regard to the evidence afforded on this point by the earldoms of Salisbury and of Warwick<sup>2</sup> was absolutely sound and judicial, which it certainly was.<sup>3</sup>

The point to which I would here invite attention is the view of a very great lawyer on what constitutes "authority." If I understand that view aright, Lord Halsbury holds that this Report is "an authority now of considerable weight" because "it is more than 80 years of age." Whisky, one is told, improves by being kept in wood; but the view that a Report gains authority by having been preserved in boards so long as eighty years again suggests the vast gulf that severs law from history. An historian who was writing on the Middle Ages would hardly go for his authorities to the reign of George the Fourth. I have not the slightest wish to disparage the

<sup>1</sup> *Speeches*, etc., p. 146.

<sup>2</sup> This evidence is very strong.

<sup>3</sup> Mr. Warmington had not cited the closing sentence of the paragraph from which he was quoting, which runs thus:—"It may be here further observed that if a Title of Honour is a tenement within the protection of the Statute *De Donis conditionalibus*, it is difficult to conceive why it should not be subject to tenancy by the Courtesy of England" (*Third Report*, p. 28). This, it will be seen, brings us back to Nevill's Case. One may add that the work on peerage law most cited, that of Cruise, lays down the general proposition that "All dignities or titles of honour . . . . . were considered as tenements or incorporeal hereditaments, wherein a person might have a real estate. And . . . . . they are still classed under the head of real property" (2nd Ed. 1823, p. 98).

Lords' Reports; as a matter of fact I shall largely uphold their criticism of Coke's statements; but I shall do so where and because it rests on records and on facts, not because they happen to be "more than 80 years of age."

In these introductory remarks it has been my object to prove that I am dealing with a "live" question, that the authority of Coke's statements on problems of peerage law is no mere matter of historical interest or academical speculation, but has been the subject of keen dispute within the last three years, a question which may again, at any moment, be raised in the House of Lords.

And so—to work! The passage I have selected from Coke upon Littleton, that "long ju-ju" of the law, may be divided into three sections. The opening portion is cited as dealing with the Earldom of Chester and figured in the Lord Great Chamberlain case (1902) and the Earldom of Norfolk case (1906), in both of which it was quoted in full. The central portion deals with the office of Constable of England and similarly figured in the Lord Great Chamberlain case (1902) and the Barony of Lucas case (1907). The closing portion deals with the descent of "a castle... for the necessary defence of the realme" and played a very prominent part in the same two cases. The order, however, of the three sections is quite immaterial, and I shall deal with the closing one first.

(1).

“A castle that is used for the  
necessary defence of the realme.”

The Lucas case practically turned on a singular and apparently unique clause in the Letters Patent creating the Barony of Lucas of Crudwell, which were confirmed by Act of Parliament. This declarative clause was intended to prevent the dignity from falling into abeyance, and it provided that, instead of doing so, it should—

goe to and be held and enjoyed from tyme to tyme by such of the said Coheires as by course of descent at the Common Law should bee inheritable to other intire and indivisible Inheritances, as namely an Office of Honour and publique trust, or a *Castle for the necessary defence of the Realme*, or the like, etc.<sup>1</sup>

On the Lord Great Chamberlain case the doctrine that “a castle for the necessary defence of the realme” was impartible had absolutely no bearing. It figured therein, however, somewhat prominently, as we shall see below.

Now this alleged maxim of the Common Law is admittedly derived from ‘Coke upon Littleton,’ in two separate sections of which the author draws a sharp distinction between (A) castles “used for the necessary defence of the realme” and (B) “castles of habitation for private use.” And to these two classes he assigns different rules of descent. I hope to show that this distinction did not even exist in our ancient law, but was evolved by Coke himself out of his own confusion and muddle.

<sup>1</sup> 15 Car. II, No. 15.

The passages in question were among those from the "ancient writers" which were printed to illustrate the Case of the claimant to the barony of Lucas.

## OF DOWER (31 b)

Of a castle that is maintained for the necessary defence of the realme a woman shall not be indowed because it ought not to be divided, and the publike shall be preferred before the private. But of a castle that is only maintained for the private use and habitation of the owner, a woman shall be indowed ..... And the statute of *Magna Charta*, cap. 7, whereby it is provided *nisi domus illa sit cast-rum*, is to be understood a castle maintained for the necessary and publike defence of the realme. .... But of the principal mansion or capital messuage, the wife shall be indowed, *si non sit caput comitatus sive Baronie*, for the honour of the realme, or (as hath been said) a castle for the publike defence of the realme.

## OF PARCENERS (165 a)

If a castle that is used for the necessary defence of the realme descend to two or more parceners, this castle might be divided by chambers and roomes, as other houses be. But yet, for that it is *pro bono publico et pro defensione regni*, it shall not be divided: for as one saith *propter jus gladii dividi non potest*, and another saith *pur le droit del espée que ne souffre division en aventure que la force del realme ne defaille par taunt*. But castles of habitation for private use, that are not for the necessary defence of the realme, ought to be parted between coparceners as well as other houses; and wives may thereof be endowed, as hath been said in the Chapter of Dower.

It will have been observed that Coke here lays the whole stress on the distinction that was drawn between the two categories. And this distinction, as I contend, was unknown to our ancient law.



The exception to partition on which ancient writers laid their special stress was not the castle, but the capital messuage of the barony or the earldom.

But let us examine Coke's statement in detail. His allegation that a woman could not be endowed "of a castle.... for the necessary defence of the realme" etc. has absolutely nothing to support it in Bracton. What Bracton does assert is something very different, namely that she must not be endowed with a manor which is "the capital messuage of a barony," because that manor must go to the heir.<sup>1</sup> He further asserts that this rule applies also to the earl and his *comitatus*, "whether there should be a castle there or not,"<sup>2</sup> which shows how perfectly immaterial he deemed its existence.

As to the words *nisi domus illa sit castrum*, they do occur in *Magna Charta*<sup>3</sup>—and are repeated by Bracton;<sup>4</sup> but they apply, *not* to the widow's dower, but to her "quarantene," which was quite a different matter!

So also the words *propter jus gladii dividi non potest* are obviously taken from Bracton, but he applies them, *not* to a castle, which would have been meaningless, but to the capital messuage of a *comitatus*, referring, of course, to the earl's sword.<sup>5</sup>

<sup>1</sup> "Dum tamen manerium illud non sit caput baroniæ, quia manerium quod est caput baroniæ integre remanebit heredi." fo. 93 (on <sup>1</sup> dos nominata).

<sup>2</sup> "Sive castrum ibi fuerit, sive non." (fo. 93 b).

<sup>3</sup> That is, in the re-issues of it (1216, 1217).

<sup>4</sup> "et maneat in capitali mesuagio mariti sui per quadraginta dies..... nisi domus illa fuerit castrum."

<sup>5</sup> "Nisi capitale mesuagium illud sit caput comitatus, *propter jus gladii quod dividi non potest*, vel caput baroniæ, castrum vel aliud ædificium" (i.e. whether it be a castle or any other kind of building). It is not easy to understand how any capital messuage (castle or not) could be the *caput* of an earldom (*comitatus*). Such *caput*, surely, was represented by the 'third penny.'

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Again, *pur le droit del espee que ne souffre division en aventure que la force del realme ne defaille par taunt* is a quotation from Britton, but this writer, who was following Bracton, applied the words, *not* to a castle, but to the capital messuage of an earldom or barony. This, I submit, clearly shows how careless Coke was in the use he made of his authorities. Bracton, in his passage on partition, lays his whole stress on the capital messuage of an earldom or barony. Whether that messuage was a castle was to him immaterial.

Coke, moreover, muddled up the ancient law on Dower and on Parceners, instead of keeping the two distinct. That law may be summarised thus:—

### DOWER

- (1) Widow not to be *dowered* in the capital messuage of an earldom or a barony.<sup>1</sup>
- (2) Widow to enjoy the capital messuage during her *quarantene* (till her dower is assigned to her), unless it is a castle.

### PARCENERS

- (1) Parceners not to divide the *capital messuage* of an earldom or barony (whether castle or not).
- (2) Parceners not to divide a single *castle*.<sup>2</sup>

Bracton and his followers, however, dealing with parceners, lay their whole stress on the former of the two propositions which I have here numbered.

No one, it seems, has detected that Coke's

It will be shown below, in dealing with 'the Duke of Buckingham's case,' that the great Bohun inheritance included the 'fee' (i.e. the 'third penny') of three counties and that one co-heir received the 'fee' of one county, and the other one the rest. cf. note 2 below.

<sup>1</sup> Bracton restricts the principle to an earldom or a barony, but in practice it was not.

<sup>2</sup> If there were (1) more capital messuages or (2) more castles than one, they could apportion them among themselves.

imaginary distinction between the two categories of castles was imaginary and wholly erroneous, or that the ancient law of partition treated them all alike.

The case for Lord Lucas,<sup>1</sup> for whom Sir Robert Finlay was leading, contains these statements (pp. 18-9):—

From the earliest days of the English feudal system “a castle for the necessary defence of the realm” has always occupied an important position. It has, it is submitted, always been regarded as an impartible inheritance, and as descending to the senior co-heir.

Such a castle could not be the subject of dower, Coke observing (Co. Litt. 31 b): “it shall not be endowed because it ought not to be divided.” (See also Fitzherbert’s *Abridgement tit. Dower* 180; Bracton fo. 96, and Blackstone’s *Commentaries*, Vol. 2, p. 132.)

This is a very surprising reference to authorities. Coke’s exact words are (see above) “Of a castle.... a woman shall not be indowed;” Fitzherbert—the passage from whom is actually printed, like that of Coke, in the extracts from ‘Ancient writers’ intended to support these statements,—does not even mention a castle;<sup>2</sup> and Bracton, on fo. 96, is dealing with the widow’s *quarantene*, which, as I have said, was quite distinct from the assignment of her dower!

When the Lucas claim came before the House, there was naturally some discussion as to what was in the minds of those who, in the days of

<sup>1</sup> Then technically claimant to the barony.

<sup>2</sup> The case Fitzherbert cites was, as he correctly states, of 4 Hen. III, and was a claim to dower in seven carucates (*not* seven acres) in Bulwick, Northants. The claim was resisted on the ground that the land was *caput baronie* and, as such, could not be assigned in dower. Bracton cites it also, to prove that a “*caput baronie*” could not be so assigned (fo. 93).

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Charles II, referred to the law governing the descent of a "Castle for the necessary defence of the Realme." One of the Law lords suggested a castle on the Scottish border, a suggestion which seemed to be welcomed as a possible solution. The difficulty was due solely to Coke's imaginary distinction between the two categories of castles. To revert for once to the schoolmen's problems,<sup>1</sup> it reminded one of Hallam's question,

What could be more trifling than disquisitions about the nature of angels, their modes of operation, their means of conversing, or (for these were distinguished) the morning and evening state of their understandings?

For great intellects, subservient to Coke, were absorbed in the subtle distinction between an ordinary castle and "a castle for the necessary defence of the Realme."

But far stranger was the castle's move in the historic case of the Lord Great Chamberlainship. It was argued in Lord Ancaster's 'Case' that this office was impartible, and that, in the case of co-heiresses, the eldest alone was entitled to it, on the ground that it was "held by the tenure of Grand Serjeanty" (which it was not and could not possibly be); and then there was given as an example of such tenure "a castle for the defence of the realm!"

This was piling the Pelion of confusion high upon the Ossa of error. Mr. Haldane, who led for Lord Ancaster, observed (to the Lord Chancellor) "I rely very much upon Coke upon Little-

<sup>1</sup> See p. 106 above.

ton.”<sup>1</sup> But let us be fair to Coke : he did hold that such a castle was an impartible inheritance ; and he also held, following Bracton, that a tenement held by serjeanty was an impartible inheritance : but neither he nor, I believe, any other human being had suggested that the tenure of a castle was a typical example of serjeanty, or had ever thought of confusing the two. Yet the “clear thinking” which brought to the birth the territorial army accepted this confusion.

Early in the course of that great speech in which he opened his case Mr. Haldane defined the categories of feudal tenure as follows :

My Lords, it is plain that this office was of course not land, but the tenure of it (that expression is constantly used by analogy) was in grand serjeanty, that is to say the tenure which is distinguished by that name because of the incidents of it. If the services were very humble indeed, it was the lowest kind of tenure,—that was the villein tenure in English law. If they were of a purely civil nature, the tenure was socage tenure ; but if they were services of a higher degree, of a military nature, then you had knight’s service, *and it was petty serjeanty* (serjeanty of course, really comes from *serviens*) *the work of a knight*.<sup>2</sup> Or if services were to be performed which were of a still greater nature, it was grand serjeanty.<sup>3</sup>

It is strange to what frightful confusion “clear thinking” may lead. We need only turn to that famous work, *The History of English Law*,—from which Mr. Haldane himself quotes at a later stage,—to learn that “the free tenures are (1) frankalmoin (2) military service, (3) serjeanty, (4) free

<sup>1</sup> *Speeches of Counsel*, p. 76.

<sup>2</sup> The italics are mine.

<sup>3</sup> *Speeches* etc. p. 10.

socage.”<sup>1</sup> Serjeanty, whether “grand” or “petty,” and whether the service were “civil” or not, comes *between* military service (*servitium militare*) and free socage, and was quite distinct from both of them.<sup>2</sup>

So far as one can understand Mr. Haldane’s definition, serjeanty might be either, according to the nature of its service, villein tenure, or socage, or knight service, or even “Grand serjeanty.” It bore, in fact, a strange resemblance to “the crew of the Nancy Bell.” Whether this was indeed Mr. Haldane’s meaning or not, the identification of “petty serjeanty” with “knight’s service” can only be described as amazing. And the military (i.e. Knight’s) service ranked above *all* serjeanty.

The above passage, however, prepares us for that which followed it.

I will give your Lordships an example. Suppose the King in those days granted *a castle for the defence of the realm*,<sup>3</sup> the service of his vassal being that he should defend the realm from that castle ; that was a tenure at that time in grand serjeanty, and as your Lordships will find in Bracton and Fleta, the land held by such a tenure always descended to the eldest of the daughters when the daughters succeeded, because the service was of so high and personal a nature that it could only be performed by one person and could not be split up. That was recognised very early.<sup>4</sup>

To this passage Mr. Haldane referred later thus :—

Your Lordships may remember the instance I gave you

<sup>1</sup> *Op. cit.* (1895), I, 218.

<sup>2</sup> See p. 123 below. ‘Scutage’ distinguished the ‘military’ tenure.

<sup>3</sup> The italics are mine.

<sup>4</sup> *Speeches*, etc. p. 10.

of a castle held by tenure of grand serjeanty for defence of the realm,<sup>1</sup> which upon descent falling to co-parceners always descended to the eldest daughter, unlike ordinary land, which went among the three daughters.<sup>2</sup>

In spite of the statements in these two passages I do not hesitate to say that no such tenure was known to our law. Neither the ancient writers, nor their successor, Littleton, nor even Coke himself, ever stated or suggested that the tenure of such a castle was tenure in grand serjeanty.

Having, however, read to the Committee the passage from Coke (165a) quoted above,<sup>3</sup> in which he states the law of descent for the two categories of castles, Mr. Haldane observed:—

Therefore your Lordships will see that whenever you get the tenure of grand serjeanty (he does not mention that tenure, but *a castle used for the defence of the realm is the classical illustration of it*),<sup>4</sup> it goes to the eldest of the co-parceners,<sup>5</sup> etc.

Coke, of course, was not speaking of serjeanty, “grand” or otherwise, in the passage cited by the learned counsel.

But let us take the actual passage from the ‘Case,’ as read thrice over by Mr. Haldane to the Lords.<sup>6</sup>

(It is now proposed to submit reasons for alleging that the Resolution of the House of Lords in 1781 was erroneous, and that, further direction being necessary, a new Resolution ought to be differently worded.

<sup>1</sup> The italics are mine.

<sup>2</sup> *Speeches*, etc. p. 74.

<sup>3</sup> See p. 114.

<sup>4</sup> The italics are mine.

<sup>5</sup> *Speeches* etc. p. 86.

<sup>6</sup> *Ibid.*, pp. 75, 76, 88. For the authorship of Lord Ancaster's ‘Case’ see *Ibid.*, p. 109.

The first and principal reason is) <sup>1</sup> That the office of Great Chamberlain, though an office in gross, is held by the tenure of Grand Serjeanty, *e.g.*, a castle for the defence of the Realm, a Barony or Earldom by tenure. Just as the service of defending a castle or rendering the service of an Earl or Baron cannot be performed by more than one person, etc., etc. (p. 10).

This passage betrays an amazing misapprehension of the very nature of serjeanty. The most familiar example of "grand serjeanty" is, no doubt, the tenure of the manor of Scrivelsby by the service of discharging the office of champion at the coronation of the Sovereign. <sup>2</sup> It was the *land* that was "held by the tenure of Grand Serjeanty," i.e. by the discharge of a service or office, not the service or office itself that was (or could be) so held.

The Lord Great Chamberlainship was (as is here admitted) "an office in gross," and had nothing to do with "tenure in (or by) Grand Serjeanty." In 1781 the Judges were asked by the House "if they considered this as an office in dignity or gross? And all agreed that it was an office in gross." <sup>3</sup>

It should really be quite unnecessary to explain that this is so, but one may cite the section 'Serjeanty' in the chapter on 'Tenure' in the *History of English Law*, as making the matter clear.

We may begin by casting our eye over the various 'serjeanties' known in the thirteenth century..... Some of the highest offices of the realm have become hereditary; the great officers are conceived to hold their lands by the

<sup>1</sup> Mr. Haldane's quotation begins here.

<sup>2</sup> This office was among those to which appeal was made in the Lord Great Chamberlain case.

<sup>3</sup> See Mr. Haldane's speech in *Speeches*, etc. p. 75.



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service or serjeanty of filling those offices. It is so with the offices of the king's steward or seneschal, marshal, constable, chamberlain.....<sup>1</sup> tenure by serjeanty was kept apart from tenure by knight's service on the one hand and tenure by socage on the other.....<sup>2</sup>

In contradiction to these statements Mr. Haldane—after confusing tenure by serjeanty, as we saw,<sup>3</sup> with knight's service on the one hand and socage on the other,—insisted with great confidence on his Grand Serjeanty argument. To resume the quotation from his speech :—

Accordingly when we come to the tenure of an office, if the nature of the office is such that the services to be performed are of a great and important nature, then the office is said to be held on "the tenure of Grand Serjeanty," or it is sometimes said "in Grand Serjeanty." If it is not land, probably "in Grand Serjeanty" is the proper expression.<sup>4</sup> But in a case of this kind..... there is not the smallest doubt, and there will be no controversy before your Lordships, that "Grand Serjeanty" is the proper description of the services by which this office was held, and indeed in which it consisted.....<sup>5</sup>

Therefore it is grand serjeanty in the sense I have indicated to your Lordships..... this office is as much held in Grand Serjeanty as it was at any period..... the office was a personal office held in grand serjeanty ; I think there will be no controversy about that,..... a personal and impartible office of grand serjeanty.<sup>6</sup>

The learned counsel had begun by asserting :—

<sup>1</sup> It was at one time supposed that the De Veres, Earls of Oxford, held their lands by the tenure of discharging the office of Great Chamberlain ; but this, as I pointed out, is disproved by the evidence of Domesday. The Lord Great Chamberlainship was simply "an office in gross."

<sup>2</sup> *Op. cit.* (Ed. 1895), I, 262-3, 271.

<sup>3</sup> P. 119 above.

<sup>4</sup> No. It was only *the land itself* that was held in (or by) Grand Serjeanty (J. H. R.).

<sup>5</sup> i.e. The office was held by tenure of the office ! (J. H. R.)

<sup>6</sup> *Speeches*, etc. pp. 10-11.

I think it is abundantly clear, and I believe everybody agrees, that that office was made and created and held on the tenure of grand serjeanty.<sup>1</sup>

Again and again, throughout the hearing, he insisted upon this proposition ;<sup>2</sup> but assertions, though *crambe repetita*, do not prove one's case. The learned counsel's final claim that—

as regards the other three offices, the analogy of these offices surely supports my proposition that an office in grand serjeanty (which this and the others are admitted to be) is an office that is impartible, etc.<sup>3</sup>

is fatal, I submit, to his contention. For the three offices claimed as analogous are, as explained in Lord Ancaster's 'Case,' those of Steward, Constable, and Marshal,<sup>4</sup> and the allegation (right or wrong<sup>5</sup>) with regard to each of these was that certain *lands* were held by discharge of the office. When you have that tenure, you have Grand Serjeanty : without that tenure you have not.

One proof, and one alone, so far as I can find, was given. Mr. Haldane vouched it thus :—

This must be an office of grand serjeanty ; I think there will be no controversy about that ; at the Coronation nobody less than a knight could officiate, *and that is the test* ;<sup>6</sup> it must be a person of at least the degree of knight to render the services.<sup>7</sup>

The strange idea that this was "the test" of

<sup>1</sup> *Ibid.*, p. 10.

<sup>2</sup> *Ibid.*, pp. 7, 76, 78, 84, 96, 230, 231.

<sup>3</sup> *Ibid.*, p. 231. So also p. 96 :—"we have got an office in.....grand serjeanty—that office according to Coke is impartible ; that office has a number of analogous offices," etc., etc.

<sup>4</sup> *Speeches*, etc., pp. 74-5.

<sup>5</sup> I certainly do not say that it was right.

<sup>6</sup> The italics are mine.

<sup>7</sup> *Speeches*, etc., p. 11.

grand serjeanty seems to have been derived from Lord Ancaster's 'Case,' where it is argued that "this last condition appears to infer<sup>1</sup> (*sic*) that the law relating to Grand Serjeanty applied" (p. 4). On which Mr. Haldane observed "I think everybody agrees that it did so apply."<sup>2</sup>

Now the most familiar example of Grand Serjeanty, as I have already said, is the tenure of Scrivelsby manor by the service of performing, at the Coronation, the office of Champion; and neither the Dymoke who performed that service at the Coronation of Charles I, nor any of those who officiated after the days of James II,<sup>3</sup> was a knight.<sup>4</sup>

So much for the only proof, the 'test' of Grand Serjeanty. Very different was the real reason for the stipulation made in 1781. It was that the precedents showed that the office of Great Chamberlain had never been discharged by any one below the rank of a knight.

Tenure by knight-service (*feodum militare*), of course, was that by which the earl<sup>5</sup> or baron held his lands under the feudal system;<sup>6</sup> and it is surprising enough, at the present day, to find "a Barony or Earldom by tenure" selected as an example of "tenure of Grand Serjeanty" (See p. 122 above). That some old-world lawyers held this strange view is proved by the evidence collected in 'Cruise on Dignities;'<sup>7</sup> but it is well

<sup>1</sup> ? imply.

<sup>2</sup> *Ibid.*, p. 74.

<sup>3</sup> i.e. from that of William and Mary to that of George IV, both inclusive.

<sup>4</sup> *Scrivelsby, the home of the Champions*, p. 165.

<sup>5</sup> A territorial baron who held the dignity of an earl.

<sup>6</sup> If there was any exception to the rule, it would not affect the proposition.

<sup>7</sup> 2nd Ed. (1823), p. 30; see below.

disposed of by the weighty observations in the 'Third Report on the Dignity of a Peer' (p. 69).<sup>1</sup>

Littleton (who lived in the reign of Henry the Sixth) in his Treatise on Tenures, speaks of Tenure by Knight Service, and Tenure by Grand Serjeanty..... he says..... that Tenure by Grand Serjeanty is Tenure by some special service to be done to the King; and though he mentions various instances of special services constituting Grand Serjeanty, he does not mention the service of attending the King in his Court, or in his Council, or in a Common Council of the Realm, as a service of Grand Serjeanty, or as any service due in respect of the Tenure of Land. It may be presumed, therefore, that he did not consider such a service as a service of Grand Serjeanty; though, in argument on claims of Peerage by tenure, it has been contended that attending the King in his Court, in his Council, and in a Common Council of the Realm, was service of Grand Serjeanty, due from all those who held a Barony.

Cruise, no doubt, has marshalled an imposing array of legal opinion in favour of the view expressed in Lord Ancaster's 'Case.'

In the case of Sir Drew Drury, in the court of wards 5 Jas. I., as reported by Lord Coke, the two chief justices and the chief baron, in the presence of the earl of Salisbury, after conference among themselves, declared that "In ancient times every baron, etc., held his barony etc. by grand serjeanty, as appeared 18 Ass. Pl. ult. in Clifford's case, and the Lord Cromwell's case, 2 Rep. 80 a." (6 Coke's Rep. 73). ..... And in Lord Coke's comment on Littleton it is said—"The Lord Clifford did hold his barony, and the sheriffwick of Westmoreland, by grand serjeanty *in capite*." And in Lord Cromwell's case it is laid down that every barony in ancient time was held by grand serjeanty. (2 Coke's Rep. 81 a.)

<sup>1</sup> Dated 18th July, 1822.

In the case of the county palatine of Wexford, as reported by Sir John Davies, earls palatine are said to have royal services, having power to create tenures *in capite*, and also tenures in grand serjeanty; for they had power to create barons.

In Lord Chief Justice Crew's argument respecting the office of great chamberlain of England is the following passage:— "The earl of Arundel being seised in fee of the castle and manor of Arundel, being held by grand serjeanty, as all the ancient earldoms and baronies were." And in Mr. Justice Doddridge's argument respecting the barony of Abergavenny he says—"Barons by tenure are those which do (hold) any honour etc. as head of their barony *per baroniam*, which is called grand serjeanty." It is also stated in this last case that the castle and honour of Abergavenny was originally granted to be holden *per baroniam*, *sive* grand serjeanty.

These passages have not been noticed by any modern writer; they appear, however, to carry considerable weight with them, and are confirmed by Spelman, a great authority, in whose Glossary, after explaining the words *magna serjeantia*, comes the following passage:— "Quin et procerum omnes dignitates, scil. ducum, marchionum, comitum, vicecomitum, baronum, hoc tenentur servitio."<sup>1</sup>

Reverting to this passage, Cruise observes:—

It appears from the passage already cited from Spelman, that earldoms as well as baronies were held of the crown by the tenure of grand serjeanty, of which the service was attendance on the *curia regis* and the *magnum concilium* on the great festivals, and at any other time when summoned.<sup>2</sup>

It was said by one of the authors of the *History of English Law* that "the next generation will never want to know how much rubbish" I have

<sup>1</sup> *Op. cit.* pp. 30-1.

<sup>2</sup> *Op. cit.* p. 59.

“swept or helped to sweep away.”<sup>1</sup> Fortified by that opinion I would here also relegate, once for all, to the dustbin the whole of the above *dicta*. But I do so largely on the strength of the admirable section on ‘Serjeanty’ contained in that work itself. To Cruise, as a lawyer, the above passages might seem to be of much weight : to me, as an historian, they do but constitute a fresh proof of “the muddle of the law.”

## (2)

The earldom of Chester case.

The special importance of this ancient case is that Coke’s treatment of it was the legal foundation of the doctrine of abeyance in dignities. This doctrine has been twice discussed, of recent years (1902, 1906), in the House of Lords, but the desired decision as to whether it applied to earldoms or not has not yet been given. At any moment, therefore, a case may come before the House in which the whole question of abeyance may be raised anew.

For the purpose also of this paper Coke’s treatment of the case is of great illustrative value. I hope to show that it confirms in very striking manner Mr. Macdonell’s criticism<sup>2</sup> that

Sometimes..... he gives a wrong account of the actual decision; and still more often the authorities which he cites do not bear out his propositions of law..... This last is a fault which is common to his Reports and his ‘Institutes’ alike, and it has had very serious consequences on English law.

<sup>1</sup> *English Historical Review* x 783.

<sup>2</sup> See p. 108 above.

But let us see what Coke says.

This passage, so much relied on and so repeatedly quoted, runs as follows :—

But now let us turn our eye to inheritances of honour and dignity. And of this there is an ancient booke case in the 23rd Henry III, *title partition* 18 in these words : “ Note, if the earldom of Chester descend to co-parceners, it shall be divided between them, as well as other lands, and the eldest shall not have this seigniory and earldome entire to herself ; *quod nota*, adjudged *per totam curiam*.” By this it appeareth that the earldome (that is the possessions of the earldome) shall bee divided ; and that where there bee more daughters than one, the eldest shall not have the dignity and power of the earle, that is to be a countesse. What then shall become of the dignity ? The answer is that in that case the king, who is the sovereigne of honour and dignity may, for the incertainty, conferre the dignity upon which of the daughters he please, etc., etc.

In the legal battle for the office of Lord Great Chamberlain, Mr. Asquith, <sup>1</sup> whose case was that it was partible, did not meet, as I hold he might have done, Mr. Haldane’s argument to the contrary by denying that the office was “ held by tenure of grand serjeanty,” but took his stand boldly on the general rule of law. Both he and Mr. Haldane, however, <sup>2</sup> cited the above passage in full, the latter, indeed, doing so twice in the course of his voluminous speech, and observing that it “ is no doubt the origin of the modern doctrine of abeyance..... the earliest indication of the modern doctrine of abeyance.”

In the Earldom of Norfolk case Sir Robert

<sup>1</sup> Now Prime Minister.

<sup>2</sup> *Speeches of Counsel*, etc., pp. 79-80, 85, 163.

Finlay, who had to argue that the doctrine of abeyance applied to earldoms as to baronies, naturally laid great stress on the "authority" of Coke and relied on the above passage as establishing that proposition.

With regard to the "authority" here of Coke, the historical student will ask two separate questions: (1) What were the facts of the case? (2) Do those facts justify Lord Coke's proposition?

It was known, of course, that Cruise, — who had very properly distinguished Coke's account of the earldom of Chester case from his "observations on this case"—had pointed out that "the above observations of Lord Coke do not seem to be well founded,"<sup>1</sup> and had given his reasons. Sir Robert Finlay, relying on Coke, referred thus to Cruise's comment:

I think your Lordships will find on looking at the whole passage that Mr. Cruise doubts the correctness of Lord Coke's version of what happened with regard to the earldom of Chester, but he nowhere, so far as I can find, throws the slightest doubt upon Lord Coke's general proposition that this applied to all Peerages including Earldoms:<sup>2</sup>

I told your Lordships..... that Mr. Cruise differed from what Lord Coke said as to what occurred with regard to the Earldom of Chester, and I venture to submit to your Lordships that, whether or not, as regards the somewhat obscure history of what took place with regard to the earldom at that date, Lord Coke was right or wrong, that does not affect the value of the general doctrine which he authoritatively lays down here in the 17th century, etc.<sup>3</sup>

<sup>1</sup> *Dignities*, (1823), p. 181.

<sup>2</sup> *Speeches..... on the claim to the Earldom of Norfolk*, p. 35.

<sup>3</sup> *Ibid.*, p. 46.



I venture to submit that Cruise does not charge Coke with being wrong "as to what occurred with regard to the Earldom," but with his "observations" on the facts. That is the whole point.

The historian would have thought that the first thing to be done, in examining the question, was to ascertain the facts: but that is not the lawyer's way. Lord Robert Cecil, replying to Sir Robert, did, indeed, go so far as to verify Coke's statement by looking up his reference in Fitzherbert's *Abridgement*;<sup>1</sup> but, as the late Prof. Maitland showed, Fitzherbert did but derive his information from 'Bracton's Note Book,' which again was derived from the ultimate authority, the rolls. Now the *History of English Law* refers to the Earldom of Chester case as "the exceedingly important case raising the question whether a palatinate can be partitioned,"<sup>2</sup> and gives the references to the 'Note-book,' so that there is no difficulty in getting at the facts of the case. Nearly twenty years before the Committee for Privileges was called upon to deal with the claim to the Earldom of Norfolk, Prof. Maitland had written thus in the Introduction to his edition of 'Bracton's Notebook,' a work intended for the benefit of his legal brethren:—

Four valuable entries concern the partition, and therefore destruction of the most formidable outcome of English feudalism, the palatinate of Chester..... the doubts of the assembled magnates over this unprecedented case, the rejection of foreign, presumably French, precedents, the reference to Roman or Canon Law as a possible supplement for English jurisprudence, the afforcement of

<sup>1</sup> *Ibid.*, p. 123.

<sup>2</sup> (1st Ed.) I, 162.

the court, the elaborately reasoned judgment, will not go unheeded (I, 128).

This, however, is precisely what they seem to have done. To not one of the eminent counsel engaged in either case or of the Law lords who heard them were any of the details known. Coke stopped the way. I cannot here go into all those details, but to certain points I would call attention.

The contest was in no way one for the dignity of earl of Chester: it was a contest for lands. John ('Scot') earl of Chester (and Huntingdon) had died in 1237 seized of the dignity of earl of Chester and also of the territorial palatinate (*comitatus*). His heirs were the two daughters of his eldest sister and his two younger sisters.<sup>1</sup> William de Forz, heir to the earldom of Albemarle, who had married the elder daughter of the eldest sister, made, in her right, a double claim: (1) he claimed to be earl; (2) he claimed the entire territorial *comitatus*, on the ground that it was a Palatinate and therefore exempt from the general rule of descent. His opponents, the other co-heirs, admitted that he ought to be earl, but claimed that the territorial *comitatus* was partible and ought to be divided. The dignity, therefore, was not in dispute;<sup>2</sup> the lands alone were in question. That is the essential point.

If these details had been known, the claim of William de Forz would certainly have been referred

<sup>1</sup> They are wrongly stated in the *Lords' Reports on the Dignity of a Peer* and in the *Complete Peerage*.

<sup>2</sup> In 'case' 1227 William de Forz is spoken of as he "qui habet æsnesciam et debet esse Comes ut ipsi participes dicunt," and in 'case' 1273 he is "qui habet æsnesciam et debet esse Comes ut ipse dicit."

to, both in the Great Chamberlain case and in the Earldom of Norfolk case, for it illustrates the importance attached to *æsnescia*—a principle keenly discussed in the former, and also the right to an earldom *jure uxoris*, which was no less keenly argued.

‘Bracton’s Note Book’ supplies, further, another point of much importance. The question, we find, was raised whether, if the *comitatus* was partible, the junior co-heirs should hold separately *in capite* of the King, or should hold of William de Forz (who had the *æsnescia*), and William of the King.<sup>1</sup> It is a singular fact that, only the year before, “the English in Ireland sent to Westminster for an exposition of the law” in precisely such a case: “Of whom do the younger sisters hold?” To continue this extract from the *History of English Law* :—

The answering writ, which has sometimes been dignified by the title *Statutum Hiberniæ de Coheredibus*, said that if the dead man held in chief of the King, then all the co-heirs held in chief of the King and must do him homage.<sup>2</sup>

The importance of this question being raised in 1237 is that it was not realized by the draftsman of Lord Ancaster’s ‘Case’ that the law, as stated by Glanvill, soon changed. Glanvill, cited by Mr. Haldane, who led for Lord Ancaster, held that

<sup>1</sup> “Utrum..... debeant ipsi participes tenere singulas partes de Domino Rege in capite vel de Willelmo de Fortibus qui habet *æsnesciam* etc. (Case 1227); utrum..... debeant tenere singulas partes de Domino Rege in capite vel de Willelmo,” etc. (Case 1273).

<sup>2</sup> *Op. cit.* (1st Ed.) II, 275. The learned authors add, in a note, that “For some time past the King had habitually taken the homage of all the parceners;” but they make no mention of the Chester case, in which the point seems to have been considered still doubtful. There is nothing to show that the doubt was based on the palatine status of the *comitatus*.

The husband of the eldest daughter shall do homage to the chief lord for the whole fee. And the younger daughters or their husbands are bound to render to the chief lord their services for their tenement by the hand of the eldest daughter or her husband.<sup>1</sup>

But "the law about this matter underwent an instructive change..... it soon becomes apparent that the King is dissatisfied with this arrangement and that the law is beginning to fluctuate."<sup>2</sup>

But not only was Glanvill's doctrine accepted as valid in the 'Case' prepared for Lord Ancaster, but it was further, by a strange confusion, connected with Coke's *dictum* that "Homage and fealty cannot be divided between co-parceners." It was pointed out by the Attorney General and by Mr. Asquith that this "means cannot be divided in the sense of being rendered *to* the co-parceners. It does not mean the converse, as is suggested in Lord Ancaster's Case—it does not mean that they cannot be rendered *by* them, but cannot be rendered *to* them."<sup>3</sup>

The essential point, however, is that the earldom of Chester case did not relate to the dignity of earl. Indeed one has only to read Coke's own words to see that the case he relied on had nothing to do with his subject. Those words are (see p. 129 above) :—

But now let us turn our eyes to inheritances of *honour and dignity*. And of this there is an ancient book case..... By this it appeareth that the earledome (that is the *possessions of the earledome*) shall bee divided.

<sup>1</sup> *Speeches* etc., p. 79. Mr. Haldane spoke of this passage as "the important book of the citation."

<sup>2</sup> *History of English Law* II, 274-5.

<sup>3</sup> *Speeches* etc. p. 167.

If, however, the whole passage is studied with care, it will seem most probable that he misunderstood Fitzherbert and wrongly supposed the case to have decided the descent of the dignity also. We must carefully distinguish from his version of the case his own comment on the decision, which is this :—

What then shall become of the dignity ? the answer is that in that case the King, who is the sovereigne of honour and dignity, may, for the incertainty, conferre the dignity upon which of the daughters he please ; and this hath been the usage since the Conquest, as is said.

Cruise naturally imagined these “ observations ” to refer to the Chester case, and it is surprising enough to find that Coke has based them on a different case, which he altogether misrepresents, and which, moreover, had nothing to do with peerage dignities !

The case in question was heard nearly twenty years before that of the Chester *comitatus*, and is No. 12 in *Bracton's Note Book*. Its editor, Prof. Maitland, has duly pointed out that these two cases “ are Coke's oldest authorities (he had them from Fitzherbert) for the law as to the abeyance of titles of honour ; ” <sup>1</sup> and what I have to insist on is that these cases concerned lands, and neither of them titles of honour. The earlier case is thus stated in the *History of English Law* :—

In 1218 a litigant pleads that ever since the Conquest of England it has been the King's prerogative and right that if any of his barons dies, leaving daughters as his heirs, and the elder-born daughters have been married in

<sup>1</sup> *Op. cit.*, I, 128.

their father's lifetime, the King may give the youngest daughter to one of his knights with the whole of her father's lands to the utter exclusion therefrom of the elder daughters.<sup>1</sup>

It is admitted in a note that "this contention seems to be over-ruled, and as a matter of fact a partition seems to have been made." What the decisions in these two cases really do establish is that the great rule of law by which lands were equally divided between co-heiresses was re-affirmed in both, despite the 'Palatinate' plea in the Chester case and the special 'custom' plea in the other.<sup>2</sup>

No blame attaches to Fitzherbert, who, in his 'Abridgement,' states the plea fairly enough:—

Soers, vers le tierce soer. fuit all' in barre un custome que fuit tel—Quod si aliquis baro..... Et omnes reges habuerunt hanc dignitatem a conquestu.

Here is the origin of Coke's somewhat vague phrase:—"and this hath been the usage since the Conquest, as is said."

But let us see how Coke has treated this case. First, he cites it for "honour and dignity," with which it had absolutely nothing to do. Second, he mixes it up inextricably with the case of the Chester *comitatus*. Third, he omits the essential fact that the plea he records was over-ruled. Fourth, he states the case wrongly, for the 'custom' alleged was quite distinct from the modern doctrine

<sup>1</sup> *Op. cit.*, (1st Ed.) II, 273.

<sup>2</sup> The decision in this case (1218) was dead against Robert de Ferrers, who pleaded the special custom:—"Consideratum est quod nichil dixerunt quare non haberent rationabiles partes suas et ideo habeant etc., et Robertus in misericordia pro injusto deforcamento."

of abeyance. In the Lord Great Chamberlain case, when the passage relating to the Chester *comitatus* had been read from Coke by Mr. Asquith, the following instructive dialogue took place.

*Lord Davey.* That is the doctrine of abeyance which we were told was not established till the Grey de Ruthyn case in 1640.<sup>1</sup>

*Mr. Asquith.* He says so, . . . . .

*Lord Davey.* I observe he says, "as is said."

*Mr. Asquith.* Yes.

*Lord Davey.* That would make the doctrine of abeyance very much older.

*Mr. Asquith.* Yes. Lord Coke cautiously says, "as it is said." He does not cite any authority.

*Lord Davey.* He asks, "What then shall become of the dignity?" And then he says, the King may "confer the dignity upon which of the daughters he pleases."

*Mr. Asquith.* Yes, it is very precise.

*Lord Davey.* He lays down the modern rule.

*The Lord Chancellor.* Yes, exactly as we should lay it down.

*Mr. Asquith.* Yes.

*Lord Davey.* He says the land would be divided between them, but the dignity would be conferred by the King upon which of the daughters he please.

*Mr. Asquith.* Yes, it would pass into abeyance, and the Crown may dispose of it as it pleases.

*The Lord Chancellor.* So that it does mean, apparently, the modern doctrine.....

*Mr. Asquith.* Yes, it is the modern doctrine.<sup>2</sup>

The point here is that Coke states as law the doctrine of abeyance in its modern form, although, even if his case concerned a peerage dignity (which

<sup>1</sup> I do not follow this. There was no abeyance in the Grey de Ruthyn case.

<sup>2</sup> *Speeches*, etc. p. 163-4.

it does not) and even if the doctrine alleged in that case had been admitted (which it was not), that doctrine would still be quite distinct from that of abeyance in its modern form.<sup>1</sup> Here, therefore, as I have said above, we have an excellent illustration of Mr. Macdonell's criticism that "the authorities which he cites do not bear out his propositions of law."

Sir Robert Finlay, however, relying on those propositions, argued in the Earldom of Norfolk case as follows :—

My submission to your Lordships is that the value of Lord Coke's proposition is altogether independent of the question whether he was right about this old case of the Earldom of Chester.<sup>2</sup> It shows the view that was taken by so very eminent a lawyer as Lord Coke when he wrote, and I think this was published in the year 1618 or 1620.<sup>3</sup> It shows the view taken by the most distinguished lawyer of his time, and stated without any hesitation and not questioned in the note.<sup>4</sup>

I had submitted to your Lordships that the value of the doctrine there laid down by Lord Coke is really independent of the question of what the precise circumstances relating to the Earldom of Chester were, because Lord Coke lays down the doctrine generally, and in a way that represents the opinion of the most eminent lawyer of that time on the subject.

I venture to submit to your Lordships that, whether or not, as regards the somewhat obscure history of what

<sup>1</sup> I am speaking, of course, of the 1218 case, the statement of which I have given above, from the *History of English Law*. For the 'earldom of Chester' case was not concerned with the dignity : indeed the parties in that case were agreed that this did *not* fall into abeyance, but should go, as of right, to the holder of the *æsnescia*.

<sup>2</sup> Sir Robert here ignored the second case (that of 1218), which was the other leg on which Coke's proposition rested.

<sup>3</sup> Mr. Asquith laid stress in the Great Chamberlain case on its having been published in 1628.

<sup>4</sup> By Mr Hargrave.



took place with regard to the Earldom <sup>1</sup> at that date, Lord Coke was right or wrong, that does not affect the value of the general doctrine which he authoritatively lays down here in the 17th century, etc.<sup>2</sup>

Now let us clearly understand the principle of legal authority which this argument implies. Coke states as law the modern doctrine of abeyance, but he does so neither on his own authority, nor as an *obiter dictum*. He rests his statement on two cases, which were, as Prof. Maitland wrote, his "authorities." <sup>3</sup> His proposition, therefore, rested upon two legs : both those legs have been knocked away ; but Sir Robert Finlay tells us that the proposition remains. Its "value" is not affected. I do not presume to question for a moment that this is sound law ; but it leaves the historian gasping.

The doctrine thus stated, (as we find) without authority, by Coke was eventually accepted as law, in the case at least of baronies, and received the crowning approval of Chief Justice Tindal. I use the phrase "crowning approval" because, in the Camoys case, that learned judge erected a little "ju-ju" of his own for the adornment of the legal paradise. <sup>4</sup> I deliberately use here again a phrase taken from fetish worship because of the reverence shown by lawyers in the presence of this Judgment (6 Cl. & Fin. 789), which is now deemed the leading "authority" on abeyance in Peerage dignities. <sup>5</sup> As the ex-Lord Chancellor, Lord

<sup>1</sup> See p. 138, note 2 above.

<sup>2</sup> *Speeches*, etc. pp. 35, 37-8, 46.

<sup>3</sup> See p. 135 above.

<sup>4</sup> In the Greek sense of that word.

<sup>5</sup> Technically, of course, it was only an "opinion," delivered on behalf of the judges ; but it is also spoken of as a "Judgment." It is cited in Palmer's

Halsbury, observed, in the Earldom of Norfolk case :—

One feels the greatest possible respect for anything that that learned Judge said..... one speaks with great hesitation in criticising anything that so great a lawyer as Sir Nicholas Tindal said, but I cannot quite follow the logic of it.<sup>1</sup>

Sir Robert Finlay, who was here arguing that the doctrine of abeyance applied to earldoms, quoted from this Judgment several passages, among which was one to which I must invite attention.

My lords..... it has been indeed the established and undoubted law upon this subject from a very early period of our history that..... the Crown, the sovereign of honour and dignity, may at any time during such abeyance determine it by conferring the dignity on whichever of the co-heirs it pleases<sup>2</sup> ..... Lord Coke indeed in his First Institute seems to think that such has been the law from the time of the Conquest,<sup>3</sup> (Co. Litt. 165), but it has at all events been acted upon at the least as early as the reign of Henry the Sixth ; who in the case of the Lord Cromwell dying without issue male, and leaving several daughters, preferred the youngest (Collins, 248, 175, and 195); and in more modern times this exercise of the Royal prerogative has been repeatedly put in force ; as amongst many others, in the case of the earldom of Oxford, in

*Peerage Law in England* (pp. 105-7), but only for its well-known over-ruling of the view taken by Chief Justice Eyre ("a very eminent judge"), some forty or fifty years earlier, in the Beaumont case. Where would actors be without their conflicting "readings," or lawyers without their conflicting views of one and the same law ?

<sup>1</sup> *Speeches*, etc. pp. 36-7.

<sup>2</sup> Coke's doctrine is here accepted as "undoubted law..... from a very early period of our history", while Sir Robert had only claimed it as law in Coke's time.

<sup>3</sup> The Chief Justice was evidently unaware that this was no opinion of Coke's own, but merely repeated the allegation made (unsuccessfully) in 1218.

1625, and in that of the Barony of Grey of Ruthin.<sup>1</sup>

Of course, if this definite statement as to the earldom of Oxford, in 1625, is true, it at once establishes the point for which the learned counsel was contending. But he was here interrupted by that very acute lawyer, the late Lord Davey, who observed:—

I rather doubt whether it was put in force in the case of the Earl of Oxford. I am not sure. That would have to be looked into.

To which Sir Robert Finlay replied: “I think there is some obscurity about it, but at any rate it has been firmly settled.”<sup>2</sup>

Now let us grasp the position. Here is a “great,” a “learned” judge laying down the doctrine of abeyance, on behalf of the judges of England, in a considered and elaborate opinion. He is defining, for the benefit of the Lords, the “exercise of the Royal prerogative,” and he deliberately selects as his examples of the exercise of that Prerogative two instances in which that Prerogative was not and, indeed, could not have been exercised. For in neither case was there any abeyance to be determined by the Crown! About the facts there is no “obscurity,” nor are they the subject of any “doubt:” they are as I have stated them.

Perhaps it is the right legal view that in such a case as this, “whether or not, as regards the somewhat obscure history of what took place with regard

<sup>1</sup> 6 Clark and Finelly, 847.

<sup>2</sup> *Speeches*, p. 45.

to the Earldom<sup>1</sup> at that date," Chief Justice Tindal "was right or wrong, that does not affect the value of the general doctrine which he authoritatively lays down here in the " 19th century." But, if so, it is difficult to see why these learned men should state facts at all. It were better surely to refrain from doing so when their alleged facts are found to be grotesque errors. A well-known clergyman of the last century was never permitted to forget that he had once, in a moment of haste, exclaimed " Hang theology." The lawyer, happier in his freedom, traces his untrammelled course: he can always in effect, if challenged, exclaim " Hang the facts. "

One hears much of the rules of evidence: this, possibly, is one of them.

But I have not yet set forth the full extent of the blunders of " that learned Judge." It was bad enough that in his facts he should so gravely err; but the origin of his error is worse. For one can clearly show that he had here merely " cribbed " from 'Cruise,' and " cribbed," Alas! with such reckless haste, such amazing want of care, that he utterly perverts the facts. We saw above that three cases were selected by the Chief Justice to illustrate the Crown's prerogative of determining an abeyance. These were "the case of the Lord Cromwell," "the case of the earldom of Oxford," and "that of the Barony of Grey of Ruthyn." Now these are precisely the three cases<sup>3</sup> which

<sup>1</sup> Of Oxford, in this case.

<sup>2</sup> Compare p. 139 above.

<sup>3</sup> "The case of lord Cromwell," "the case of the earldom of Oxford," and that "of the barony of Grey of Ruthyn."

Cruise had similarly selected on pp. 182-3 of his work<sup>1</sup> in dealing with "Abeyance of dignities by writ." But in his words there is nothing to account for so amazing a blunder as that which meets us in the statement by the Lord Chief Justice. That either in the case of the earldom of Oxford or in that of the barony of Grey de Ruthyn the Crown determined an abeyance is nowhere stated or even implied in Cruise's accurate account. In neither case, as I have said, was there an abeyance to determine. As to Cromwell, the facts are wrong, for Lord Cromwell left as his heirs, not "several daughters," but two nieces. On this, however, one need not insist, for it does not affect the principle; and Cruise is not responsible for the error, which he merely quotes from Coke.

The fact that the Chief Justice had merely "cribbed" from Cruise was unconsciously made manifest when Sir Robert Finlay, after citing him, proceeded to cite from Cruise the very passage which, as I contend, the Chief Justice must have read with such amazing want of care.<sup>2</sup> The whole point of the episode is the illustration it affords of that almost contemptuous indifference to fact that a great lawyer could betray. Again and again have I observed, as I sat and watched these cases, that, just as in the House of Commons the "incident" or the "personal explanation" will often arouse a keener interest than a matter of national concern, so also the energies and the acumen of Law lords and counsel alike are always

<sup>1</sup> *Op. cit.* (2nd Ed.).

<sup>2</sup> *Speeches* (as above), pp. 45, 47.

at their keenest when discussing a "knotty point of law," the mere facts, with the evidence on which they ultimately rest, presenting a feeblar attraction to the legal mind.

Let me again insist that deep at the root of the mischief there lies that false conception of what constitutes "authority." Fiction is not converted into fact because it happens to proceed from the mouth of a learned judge. Of Coke's "intrinsic authority" I have already spoken: with Comyn it is the same story.

Best, C. J., citing Comyn's opinion in his Digest, said: "This he lays down on his own authority without referring to any case, and I am warranted in saying we cannot have a better authority than that learned writer. (*Hudson v. Rebet*, 5 Bing, 387, 388.)"<sup>1</sup>

What the historian seeks to know is, not whether a lawyer was "great," "eminent," or "learned," but what authority he had for his statement and whether he was right in his facts.

By the side, let me hasten to add, of this medieval method, derived from days when the law was a mystery of which the judges were the oracles, the modern scientific method has slowly forced its way. In the very case of the Earldom of Norfolk, with which I have just been dealing, these two methods clashed. In support of the view that "abeyance" applied to earldoms as to baronies, appeal was made, on the one hand, to the "authority" of Coke and of Tindal, and, on the other, to the true authorities, the records which

<sup>1</sup> Palmer's *Peerage Law in England*, p. 27, where Lord Kenyon also is cited to the same effect.

proved the facts of the Crown's dealings with earldoms and of which the evidence was collected and arranged with infinite care. But oil and water cannot mix: the meaning of "authority" must be either (1) the unsupported statement of a judge, or (2) the evidence that proves the fact. It is not possible to combine these two conceptions of authority; the medieval is divided from the modern by a gulf.

The same difficulty, strangely enough, confronts the lawyers and the heralds. However anxious they may both be to adopt the modern method, they are hampered at every turn by their predecessors' acts. We saw at the outset that, by the admission of Chief Justice Best, "we should get rid of a good deal of what is considered law in Westminster Hall if what Lord Coke says without authority is not law." And we should, similarly, have to jettison much genealogy and heraldry in the MSS. at Heralds' College if what has been stated or accepted by bygone Kings of Arms were now put to the proof. Of the latter difficulty, at least, I can speak with special knowledge. For again and again I have had to show the inevitably disastrous effect of endeavouring to pour into the 'old bottle' of unsupported pedigrees the strong 'new wine' of record evidence and facts.<sup>1</sup>

The two methods cannot be combined: proof or assertion, which shall it be?

To that question there is one at least who has given, in the realm of law, no uncertain answer.

<sup>1</sup> Compare the remarks on the Trafford pedigree in the paper on "Saxon" houses, and those on the 16th century pedigree of the Caringtons.

He who set himself to hew the stones "for some builder of the future," knew that the whole fabric must be built afresh from the foundations, and strove to make very sure that those who wrought it should "have facts and not fictions to build with." He and his colleague could at least claim that they had "given scholars the means of verifying" their "work throughout."<sup>1</sup> For Frederic William Maitland was a man to "prove all things." The historian's method he had made his own: it was not for that great genius to learn, but to teach that method.

While others lingered among the tombs, he drew his knowledge of our law, not from the sepulchres of its sages, but straight from the source itself. For him no fetish blocked the way; for him no vain repetition of statements from the legal Talmud<sup>2</sup> would make those statements true. If "Co. Litt." was wrong, it was not blasphemy to say so; to treat its "sentence" as a judgment from which there was no appeal was worthy of the Middle Ages.<sup>3</sup> I do not know, nor do I suppose that the famous Downing Professor ever said so much, but one can imagine, had he spoken out, how his witty raillery might have shocked the veterans of Bench and Bar. For in his ever vivid originality, in the daring brilliance of his

<sup>1</sup> Preface to the *History of English Law*.

<sup>2</sup> "certain it is that there is never a period, nor (for the most part) a word, nor an '&ca' but affordeth excellent matter of learning." (Coke upon Littleton.)

<sup>3</sup> Compare the *Dialogus de Scaccario* on Domesday: "Hic liber ab indigenis Domesdei nuncupatur; sicut enim districti et terribilis examinis illius novissimi sententia nulla tergiversationis arte valet eludi, sic cum orta fuerit in regno contentio de his rebus quæ illic annotantur; cum ventum fuerit ad librum, sententia ejus infatuari non potest vel impune declinari."



style, Maitland was the Whistler of the Law.

(3)

The Duke of Buckingham' case.

It is not Coke's statement of this case that illustrates "the muddle of the law" so much as the case itself and the use that has been subsequently made of it. After dealing with "inheritances of honour and dignity,"<sup>1</sup> Coke, still treating of Parceners, proceeds thus (Co. Litt. 165 a) :

But there is a difference between a dignity or name of nobility and an office of honour. For if a man hold a manor of the King to be High Constable of England and die leaving issue two daughters, the eldest daughter taketh husband, he shall execute the office solely, and before marriage it shall be exercised by some sufficient deputy. And all this was resolved by all the Judges of England in the case of the Duke of Buckingham.

Here one observes, at the outset, before investigating the facts, that Coke introduced an extraneous element ; he professes to be stating the rule of descent in the case of "an office of honour," but his illustration is the tenure, not of an office, but of a manor. "For if a man hold *a manor..... to be* High Constable," he writes. And this distinction is vital. Such a tenure, as I explained above, is true tenure by serjeanty (whether grand or petty), and the office would follow the possession of the manor irrespective of descent in blood.

That this is so was shown, for instance, at the coronation of the present King, when the Duke of Newcastle made good his claim, as "holding the

<sup>1</sup> See p. 129 above.

Manor or Priory of Worksope," to the "services" of providing a glove for the King and supporting his Majesty's right arm, although the land had only been acquired by his predecessor, a stranger in blood, by purchase from the Duke of Norfolk in 1839.<sup>1</sup>

It will be seen, therefore, that Coke's proposition would only, on his own statement of the facts, be applicable to an office held in virtue of a manor irrespective of descent in blood. If the land were held jointly by the sisters, or wholly by the younger sister, or were alienated, the office would not belong to the elder sister alone.<sup>2</sup> His rule ignores his own statement that the office attached to the manor.

But his statement of the facts is wrong. For the office was alleged to attach, not to "*a* manor," but to three. And this again is vital: it was the very essence of the difficulty. For of these manors two had passed to the senior, and one to the junior co-heir, both of whom, *by reason of their tenure*, had consequently rights in the office. It is recognised that Coke relied on Dyer's report of the case, and in that Report the headnote runs: "If a man holds *manors* of the King by service of being Constable of England," etc. This was very carelessly reproduced by Coke as "if a man hold *a manor* of the King to be High Constable of England," etc.<sup>3</sup> I shall have to compare again below Coke's statement of the facts with

<sup>1</sup> See Wollaston's *The Court of Claims*, pp. 133-6, 143-6.

<sup>2</sup> In the second or third of these cases the office, clearly, could not even be executed by the elder sister's husband of right.

<sup>3</sup> I cannot find that Coke's mistake has been pointed out before.

that of his own authority, but for the present it is enough to have shown (1) that he reproduced that statement incorrectly, (2) that even his own statement does not involve his proposition of law.

We will now turn to the use that was made of Coke's proposition when the Great Chamberlainship was in dispute in 1779. The Attorney-General of that date evidently considered it unnecessary to search for Coke's authority ; for, although he does not cite Coke, he repeats Coke's proposition.

It only remains, therefore, to consider in what manner the right of the office may be exercised in the case of co-heiresses, the eldest of whom has taken husband..... that question appears to have been clearly decided in a very celebrated case : Edward Duke of Buckingham claimed to be entitled to the office of Constable of England by descent from the eldest of the two co-heiresses of Humphrey de Bohun, Earl of Hereford and Constable. Upon a case stated to the Judges in relation to the said claim, 6 H. 8, it was unanimously resolved that *where the said office descended to daughters and the eldest taketh a husband he shall execute the office solely, and before marriage it shall be executed by some sufficient deputy.*<sup>1</sup> This resolution of the judges is maintained in several books of authority, is nowhere disputed and appears in all the parts of it to agree with the usage in such great offices as have in the course of time descended to heirs general.<sup>2</sup>

Here, it will be seen, the Attorney General states the resolution of the Judges as it is stated by Coke, ignores the manors, and treats the question as one of "descent" alone. His conclusion, therefore, was "that the eldest co-heiress having

<sup>1</sup> The italics are mine.

<sup>2</sup> Attorney General's report of 1779, quoted in *Speeches*, etc., pp. 58-9.

taken a husband,<sup>1</sup> he is in her right entitled to execute the same" (office).<sup>2</sup>

The judges, however, when consulted by the House, gave their opinion, on the contrary, "That the office of Lord Great Chamberlain of England belongs to both sisters; that the husband of the eldest is not of right entitled to execute it," etc.<sup>3</sup>

When it was endeavoured to re-open the question on behalf of Lord Ancaster, now the senior co-heir, the Duke of Buckingham's case was relied on as proving exactly the opposite of what it had been assumed to prove in 1779! For the lawyers had by this time got so far as to examine the actual reports of the case,—quite a notable advance. It was thus discovered that there were *two* reports, (1) Dyer's, which had been used by Coke, and (2) Keilway's, which is much fuller, but which omits the essential clause as to the husband of the elder daughter. In 1902, therefore, it was the counsel for the *junior* co-heirs who relied upon the famous case, while those of Lord Ancaster were disposed to minimise its importance.<sup>4</sup> Mr. Asquith, taking his stand on Keilway, vigorously claimed that his report showed "the real decision in that case" to have been in favour of the principle which

<sup>1</sup> Mr. Peter Burrell (see p. 51).

<sup>2</sup> *Speeches*, etc., *ut supra*.

<sup>3</sup> *Ibid.*, p. 62.

<sup>4</sup> Mr. Haldane observed: "I do not think that one can say that it lays down anything that is at all really conclusive upon the question which we have got before us ..... this case is very much relied upon in the case that is put before your Lordships by Lord Cholmondeley here ..... it is not my document so much as it is the document of my learned friend who represents Lord Cholmondeley ..... your Lordships will hear great reliance placed upon it when my learned friend representing Lord Cholmondeley comes to address your Lordships." (*Speeches*, etc., pp. 94, 95).

he was upholding.<sup>1</sup> Five years later, in 1907, Counsel for the claimant of the Lucas barony were urging in his Case (pp. 13-14) that Dyer's version, not Keilway's, was the right one. With this question we shall deal below.

The reader may now wish to know what the case of the Duke of Buckingham, decided by "all the judges of England" in 1514,<sup>2</sup> really was. It is thus stated by Dyer (with whom Keilway is here in agreement) :—

Humphrey de Bohun, late Earl of Hereford, held the manors of Harlefield, Newnam, and Whytenhurst in the County of Gloucester of the King by the service of being Constable of England, etc.<sup>3</sup>

This statement lay at the very root of the case. It is, therefore, delightful to find that those wise men of Gotham, "all the judges of England," were called upon to give their decision on a state of things which (it can be shown) had no existence in fact. For it is absolutely certain that these three manors were *not* held "by the service of being Constable of England," and that a decision based upon the supposition that they were is vitiated *ab initio*.

Of the three manors Haresfield alone could conceivably claim any connection with the office, as having been held by the house of Gloucester, who also held a Constablenesship,<sup>4</sup> as early as the Conqueror's day. Wheatenhurst, on the other

<sup>1</sup> *Ibid.*, p. 166.

<sup>2</sup> Not 1515, as stated. The case belongs to Mich. term, 6 Hen. VIII.

<sup>3</sup> I quote the translation from the legal French, as read out to the Committee (*Speeches*, etc. p. 94. On p. 90 is Keilway's statement to the same effect).

<sup>4</sup> It seems doubtful whether this was originally *the* Constablenesship.

hand, is known to have only come to the Bohuns with the daughter of Geoffrey Fitz Piers at a much later date.<sup>1</sup>

As it is important to establish this, the descent of Wheatenhurst must be shown. Geoffrey's daughter Maud, Countess of Hereford, whose marriage-portion it had been, was still holding it so late as 1236;<sup>2</sup> but "in what way Geoffrey had acquired this manor remains," we are told "to be discovered."<sup>3</sup> I will therefore trace the manor further back. In the *Red Book of the Exchequer* (p. 374) we read that "Witehurst" was held of William de Say, in 1166, by his uncle of the same name. Now "Witehurst" is the form assumed by Wheatenhurst on the Close Roll of 4 Henry III,<sup>4</sup> which records that it was the portion of Geoffrey Fitz Piers' daughter; and Geoffrey, we know, married the elder daughter and co-heir of a William de Say, who divided the Say inheritance with her sister.<sup>5</sup> There cannot, therefore, be any doubt that the 'Witehurst' of 1166 was Wheatenhurst itself.<sup>6</sup> And this identification is clinched by a grant from "William de Say, brother of William de Say" to the monks of Troarn of the tithe of his

<sup>1</sup> This was known to Dugdale (*Baronage* I, 180) from the Close Roll of 4 Henry III.

<sup>2</sup> Sir Henry Barkly's *Notes on the Testa de Nevill* for Gloucestershire (1890) in Vol. XIV of the Bristol and Glouc. Arch. Soc. Trans.

<sup>3</sup> *Ibid.* Sir Henry suggested that "it may have been given by Henry II to Geoffrey's father, Simon Fitz Peter, Earl of Essex (*sic*), who is said to have married Eustachia, a cousin of the King's." There was no such Earl of Essex.

<sup>4</sup> Wheatenhurst also appears as "Witehurst" or "Witehurste" in several Bruton Priory charters (*Bruton Cartulary* [Somerset Record Society] pp. 76, 77, 78, 79, 82, 83).

<sup>5</sup> See Dugdale's *Baronage* and my *Ancient Charters* (Pipe Roll Society).

<sup>6</sup> It rejoined the Say lordship of Kimbolton on Maud becoming heiress (as well as daughter) of Geoffrey in 1228.

mill at "Witehurst," with the consent of his lord William de Say.<sup>1</sup> This grant would be previous to 1166, when the grantor, we have seen, was holding not from his father, but from his nephew.

By a singularly infelicitous 'shot' the editor of the *Red Book* definitely identifies it as "White Hurst" (p. 1357). This would not matter so much if the guess were avowed; but, unfortunately, the reader is assured that "the place names in this Index have in fact been subjected in turn to a threefold scrutiny" and that "no identification has been attempted here without long and anxious investigation." (pp. CCCLXXIX-CCCLXXX) He would naturally, therefore, accept the identification as established and thus miss this important clue to the manor's true descent.<sup>2</sup>

It is only fair to the Public Record Office to say that if one of its experts came thus to grief over 'Witehurst,' 'le Witehers' proved deadlier still to one from the British Museum. Among the Berkeley Castle muniments edited by Mr. Isaac Jeayes is one described as a

"Release..... to Dom. Warin fil. Geroldi of the third part of a virgate and a half of land, and of two messuages in Kingston (Kingston-Lisle), juxta le Witchers," etc.<sup>3</sup>

And "Witchers, Le, in Kingston Lisle" figures in the "Index of Places." Though I have not even seen the document, I have no hesitation in reading 'Witehers' instead of 'Witchers,' and in, further,

<sup>1</sup> *Bruton Cartulary*, p. 82.

<sup>2</sup> One might fairly suggest that its distance from Kimbolton might account for Geoffrey parting with it as a marriage-portion for his daughter, while its nearness to Haresfield made it acceptable to her husband.

<sup>3</sup> *Catalogue of the muniments at Berkeley Castle*, p. 141.

joining to Kingston the words "juxta le Witehers." We thus obtain the place-name "Kingston *by the White Horse*," the manor being thus distinguished from all other Kingstons by its proximity to that famous object which gave its name to the whole vale.<sup>1</sup> Whitehorse Hill itself is in Uffington, not in Kingston, but those who have not forgotten their 'Tom Brown's Schooldays' may remember that its author names them both as he sings the glories of the Horse.

Wheatenhurst having afforded proof that the three manors were not, as alleged, held by the service of acting as High Constable of England, let us see to what is due the strange belief that they were. As usual, it can be traced to a quite erroneous finding in an *Inquisitio post mortem*. In 1373, after the death of Humphrey de Bohun, Earl of Hereford and Essex, the last of his line, it was 'found' that he had held Haresfield by the service of being Constable and Wheatenhurst and Newnham by the same service.<sup>2</sup> But even the Inquisitions do not agree among themselves. A generation later, in 1403, Edmund, Earl of Stafford, the Duke's predecessor, was found by the Essex jurors to have died seised of "the office of

<sup>1</sup> It is similarly quite needless to see the original document in order to say that the "Grant from Edward I to Thomas, son of Maurice (de Berkeley)," in 1292, of vast possessions in Ireland (*op. cit.* p. 147) was made, on the contrary, to the well-known Thomas Fitz Maurice, lord of Decies and Desmond; or that its exception of "all the saffron growing on the said land" was really that of the (giving of) croziers—"saffron" being an unlucky shot for *croceis*! But if even "Duuelina" (i.e. Dublin) baffled the editor, what could one expect?

<sup>2</sup> Inq. p. m. 46 Edw. III, 1st numbers, No. 10. This with the later Inquisitions was among the documents printed for the Great Chamberlain case and again for the Lucas case.



Constable of England," no manors being named in connexion with it, while the Gloucestershire jurors found that he had held Wheatenhurst, "by what service they are ignorant."<sup>1</sup> Similarly, in earlier days, Gloucestershire jurors had found that Humphrey, Earl of Hereford and Essex, had held Wheatenhurst "by service unknown."<sup>2</sup>

Moreover, Haresfield itself is entered in the *Testa de Nevill* as held, not by the alleged service, but by ordinary knight-service.<sup>3</sup>

It is right to mention that in the 'Case' presented for Lord Ancaster a caution was duly given :—

It is, however, very doubtful whether the great offices of State were really attached to manors, except in the sense that manors were granted as maintenance.<sup>4</sup> Such a tenure has often been alleged and occasionally found by juries. No mention of manors occurs in the grants of the offices, though certain manors have always descended to the persons who succeeded to the offices and came to be considered as appurtenant thereto (pp. 13-4).<sup>5</sup>

A particularly good example of this confusion is afforded by the Great Chamberlainship itself. The Veres were already holding (Castle) Hedingham in Domesday (1086) and did not receive the said office till nearly half a century later. And yet it was afterwards alleged, and even "found," that they held their barony of Hedingham by the service of acting as Chamberlain, and this belief

<sup>1</sup> See preceding note.

<sup>2</sup> 3 Edw. I (*Calendar of Inquisitions*, Vol. II, p. 70).

<sup>3</sup> "Comes Heref' tenet in Hersefeld cum pertin' XIII mil. et dim." (p. 77).

<sup>4</sup> I cannot admit even this exception (J. H. R.).

<sup>5</sup> Quoted by Mr. Haldane in *Speeches*, etc. p. 89.

had to be considered when dealing with the recent claim.

But what we have to remember is that, in 1514, the tenure of the three manors by serving the office of Constable was accepted without question, and that the difficulty was caused by one of these three manors having passed into the hands of the Crown in consequence of Henry IV's marriage with the junior co-heiress of Bohun. There was, in 9 Henry V, a final partition between the co-heirs, and Keilway states that the King chose Haresfield: Dyer states that he chose "W.," and is clearly right. For, by this partition, "Le Manoir de Whitenhurst" was included in "La purpartie de Roy," while the manors of 'Haresfeld' and Newenham were comprised in "La purpartie del Dame Anne la Countesse de Stafford."<sup>1</sup> It was natural, however, that confusion should arise, for the *original* division between the coheirs seems to have been wholly different, and Wheatenhurst is found in the hands of Thomas ('of Woodstock'), Duke of Gloucester, of his wife (the senior co-heiress), of their daughter Isabel, and of Edward, Earl of Stafford (in 4 Hen. IV).<sup>2</sup>

Thus arose "three questions, which," says

<sup>1</sup> *Rotuli Parliamentorum* (1421), IV, 136-8. In full accordance with this is the restoration by Richard III of the Crown's half of the inheritance to the senior (by that time the sole) co-heir (printed in Dugdale's *Baronage*), for in the schedule of that half Wheatenhurst is found.

<sup>2</sup> See *Rot. Parl.* IV, 136-8 for the change of the purparties. It seems to have escaped notice that the 'fees' (i.e. the 'third pennies') of three counties were apportioned between the co-heirs, and that Thomas 'of Woodstock' was originally assigned those of Essex and Northampton, which is doubtless why he is occasionally styled Earl of those counties. Henry 'of Bolingbroke' obtained that of Hereford, which is doubtless why he was created Duke by the style of Hereford. Eventually (1421) the King had "le fee del countee de Essex," while the Countess of Stafford had those of cos. Hereford and Northampton.

Keilway, "have been debated divers times before all the Justices by all the Counsel of the King of the one part and by the Counsel of the Duke of the other part. The first question was whether this office was or could be reserved upon the feoffment or not? And as to this question the justices have made the case clear, that is to say, that the Office was well reserved." <sup>1</sup>

The wise men of Gotham were now in a great difficulty. For it followed that the King held a manor by the service of acting as his own Constable (or as one third of his Constable), in which capacity, it was alleged, he could arrest his own person.

This Gilbertian situation set the lawyers to work. But they had soon tied themselves up in a fresh and frightful knot. Fineux, the presiding augur, "in the presence of all the Justices of England for the same cause assembled," stated that they were all agreed that the Duke (who was claiming the office as his right) was "*compellable* at the pleasure of the King to do and exercise the office,"—when the King's one object was to keep him out of it! And why? Because otherwise the Duke would hold his two manors "without doing any service for them." Then ensued this dialogue, which is only part of that which was gravely read by Mr. Haldane to the Lord Chancellor and the Law Lords, in Committee assembled, on the fourth of March in the year of Grace 1902.

*Nevell*: 'Sir, what is the nature of the tenure in this

<sup>1</sup> Dyer gives the question thus: "Whether the reservation of the tenure at the commencement by the King was good? And by the opinion of all the Judges it is good enough."

case ?' *Fineux* : 'Grand Serjeantry without doubt.' *Nevell* : 'In Grand Serjeantry is included Knight Service, and then notwithstanding that the office be determined still the service of chivalry remains to the King.' *Fineux* : 'Grand Serjeantry is true service of chivalry and no diversity between them, saving in the relief, for grand serjeantry shall pay the extent of the land for a year, and service of chivalry according to the rate of 100s. for a knight's fee ;' *quod fuit concessum*. *Brudnell* : 'And if the King extinguish the office by his release, or by any other means, nothing remains to the King except a nude socage;' *quod fuit concessum*.<sup>1</sup>

The meaning of all this is that 'Nevell' was trying to prove, as against 'Fineux,' that even if the office were determined, there would still be a 'service' due from the Duke for these two manors.

If the three manors had been held by the service alleged, Fineux would have been perfectly right in stating that the tenure was "Grand Serjeanty without doubt." But, as we have seen, they were not. Nevell, however, starting from Fineux's statement, argued that knight-service was "included in" Grand Serjeanty and would, therefore, be still due in respect of the manors, even if the "office" were determined.<sup>2</sup> Fineux retorted that Grand Serjeanty *was* knight-service, implying that if it came to an end, there would be no service left for the Duke to render ; and Brudenell<sup>3</sup> drove the point home by observing that in that case there would remain to the King nothing but a "nude socage." Fineux and Nevell were both

<sup>1</sup> *Speeches*, etc. pp. 92-3.

<sup>2</sup> i.e. came to an end.

<sup>3</sup> Justice (afterwards Chief Justice) of the Common Pleas and founder of the Brudenells of Deene, afterwards Earls of Cardigan.

in error, because Serjeanty (Grand or Petty) and Knight Service were fundamentally distinct categories of service. To say that land could be held at one and the same time by serjeanty and by knight-service was a statement inherently absurd; and its absurdity would have been manifest alike to Bracton in the 13th century and to Madox, that eminent antiquary, in the days of George the Second.<sup>1</sup> That such statements could be made before "all the Justices of England" does but show the frightful confusion into which the lawyers had brought our old feudal law.

I explained above that there were two reports of the judges' decision on this occasion. Keilway's report, the fuller of the two, states thus "the second question :—When these manors were descended to the women, how they could do this office? And as to this question the Justices were clear that they could make their sufficient deputy to do the office for them." This was the version of the decision on which Mr. Asquith relied.<sup>2</sup> On the other hand, Dyer's report, although much the shorter, adds to this reply the words :— "and after marriage the husband of the eldest may alone."<sup>3</sup> This was the version accepted by Coke (although in somewhat careless fashion<sup>4</sup>)

<sup>1</sup> *Baronia Anglica* (1736). Knight-service was distinguished from Serjeanty by the essential 'note' of scutage.

<sup>2</sup> *Speeches*, p. 91.

<sup>3</sup> p. 94.

<sup>4</sup> Coke transposed the clauses in Dyer's version and reads :—"the eldest taketh husband he shall execute the office solely, and before marriage it shall be exercised by some sufficient deputy." Mr. Asquith (*Speeches*, p. 164) pointed out that these are very ambiguous words, because it does not say by whom the deputy is to be appointed; but this is merely due to Coke's incorrigible carelessness, which led him to omit the essential words :—"they shall make their" sufficient deputy.

and, from him, by the Attorney General in 1779.

The real question at issue in this celebrated case has been somewhat strangely obscured. According to the Attorney General's report in 1779, the Duke "claimed to be entitled to the office of Constable of England *by descent from the eldest of the two co-heiresses* of Humphrey de Bohun". If this were so, there might be a parallel (apart from the question of tenure of the manors) between his claim and that of the senior co-heir in the Great Chamberlainship case. But the Duke was *sole* heir of the Bohuns and the question, therefore, of the relative right of two daughters and co-heiresses did not arise in the case. How then was it introduced? It appears to me that Counsel for the King were urging successive objections to the Duke's claim, and that one of these was that the office would of necessity come to an end when it fell to two co-heiresses, as there would be no one person who could execute it.<sup>1</sup> The question would thus arise hypothetically and indirectly, and the judges (as I urge below) would answer it by falling back on what had happened when the case had actually arisen.

Assuming, as seems to have been assumed in 1902, that the Duke of Buckingham's case is really in point,—which I contend it is not, having been decided on the assumption that the office was attached to the tenure of land,<sup>2</sup> which the Chamberlainship admittedly was not,—the question arises whether we should adopt Keilway's or Dyer's

<sup>1</sup> In the case of a *sole* heiress her husband could execute it for her.

<sup>2</sup> This assumption was seriously questioned, on behalf of the Crown, by the Attorney-General in 1902(*Speeches*, pp. 203-5).

report of that case. Mr. Asquith, in that forceful speech which is believed to have influenced the Committee, insisted, almost vehemently, that Keilway was "the contemporary reporter," and that the clause about the husband of the eldest daughter was "an interpolation of Dyer's," who was a later writer. He claimed, therefore, that the case was "misquoted by Lord Coke."

"that is not what was decided in the Duke of Buckingham's case as I shall show your Lordships..... The passage which Lord Coke cites does not appear at all in the report of Keilway, it is only in the report of Dyer. Now this case of the Duke of Buckingham was decided in the reign of Henry VIII. *Keilway was a reporter at that time*—his reports are in Norman-French or in dog-Latin-French, and *he appears to have been a regular attendant upon the courts and a reporter at this time.*<sup>1</sup> Dyer, I am told by my learned friend, was two years old at the time when this case was decided in the reign of Henry VIII. He could have had no direct or first-hand knowledge of it at all; but reporting in the reign of Elizabeth, etc., etc.

Now that is the decision as reported by *the contemporary reporter, Keilway*<sup>1</sup>..... But then Dyer goes on "and after marriage the husband of the eldest may alone." That is an interpolation of Dyer's. There is not a trace of that anywhere in the original report. But Lord Coke has copied it into his reports in Coke upon Littleton,..... but the real decision in that case of the Duke of Buckingham is what I have quoted from Keilway."<sup>2</sup>

Unmoved by forensic art the historian at once enquires, what is the proof for Mr. Asquith's statement that Keilway was "the contemporary reporter" of the Duke of Buckingham's case?

<sup>1</sup> The italics are mine.

<sup>2</sup> *Speeches*, pp. 165-6.

According to the *Dictionary of National Biography*<sup>1</sup> Keilway was not even born till 1497: he cannot, therefore, have been more than seventeen when this case was heard in Mich. term 6 Henry VIII. Let us turn then to his Reports and enquire what evidence they afford that he was actually reporting at that early age. Their title is

Relationes quorundam casuum selectorum ex libris Rob. Keilway. Arm. qui temporibus..... Regis Henrici Septimi et inclitissimi Regis Henrici 8 emerserunt et in prioribus impressionibus relationum de terminis illorum Regum non exprimuntur in lucem.

Even Mr. Asquith would hardly venture to assert, in his dogmatic fashion, that Keilway (b. 1497) was a contemporary reporter for the reign of Henry VII (1485-1509). The title of the book clearly proves that his knowledge of the earlier cases must have been at second hand and that there is no reason to suppose that he was, as alleged, himself the reporter of the Duke of Buckingham's case.

It was not till 1581 that Keilway died, and his reports were not published till 1602. Though Dyer was fifteen years junior to Keilway, his reports had passed through three editions when those of Keilway saw the light. This was duly pointed out by the petitioner's counsel in the Barony of Lucas case (1907),<sup>2</sup> where it was also observed that Dyer's version was followed not only by Coke, but by Doddridge in the Great Chamberlain case of 1625.<sup>3</sup>

<sup>1</sup> This work was elsewhere cited at the 1902 hearing.

<sup>2</sup> *Printed case*, pp. 13-14.

<sup>3</sup> Doddridge took his statement of the law direct from Dyer, Coke's work not being published till 1628.



Thus far, however, we are merely left to decide whether it is more probable that Keilway omitted a part of the decision or that Dyer deliberately invented it. The latter view would *a priori* seem the less likely, especially in view of the high reputation enjoyed by Dyer.<sup>1</sup> But we have more to guide us than this. No one, it seems, suggested what is surely obvious enough, namely, that the judges, when assigning to the husband of the elder daughter the right to exercise the office, were simply guided by the fact that he had actually done so at an earlier date when the case had arisen. It was admitted, on all hands, that "Thomas of Woodstock," husband of the elder daughter and co-heiress of the last Earl of Hereford and Essex, had held the office, originally, no doubt, by grant during the minority, but afterwards, apparently, in her right till his death. Therefore the statement of law which Dyer is charged with inventing and placing in the judges' mouths is in absolute accordance with the precedent which the judges must have had before them in this very case.

It is a serious matter to charge a reporter of Dyer's reputation with interpolating an answer by the judges when that answer is simply that which the judges would certainly have given if they were guided by the history of the office as it would be placed before them. To establish such a charge more is needed than Mr. Asquith's assertion.

To the very end of this strange case (1902)

<sup>1</sup> According to the *Dictionary of National Biography* his contemporaries recognised his "incorruptible integrity, learning, and acumen," while in his reports "the arguments of counsel and the decision of the judges" are compressed into as small a compass as is consistent with precision."

there was the same amazing confusion between an office in fee and a manor or manors held by the service of performing an office. In his reply, at the close, to the Attorney General, Mr. Asquith devoted himself specially to the office of High Constable.<sup>1</sup> Starting from the assertion that "the constablenesship was an office which was held in fee, evidently like the office which your Lordships are now considering" (i.e. the Great Chamberlainship), he traced its descent as such, asserting that, in spite of intervening grants, "when Henry VII came to the throne it goes back to the old family; in 1485, in the first year, I think it is of Henry VII, it goes back to the Buckingham family"..... "the King disregards this whole series of intermediate grants and goes back to the old stock, just as he does with the Chamberlainship." An excellent point, and skilfully put. But here the speaker had to be reminded that the facts were quite the reverse, that Henry VII did *not* "go back to the old family," but confirmed the office to a stranger in blood. Mr. Asquith brushed the facts aside :—"I thought it was Henry VII, but I understand it was Henry VIII." Again the speaker had to be stopped : the Lord Chancellor pointed out that "This was to hold it only for a single day," the Attorney General having clearly shown, on behalf of the Crown, that Henry VIII, so far from recognising an hereditary right in the Duke, had appointed him to act, at his Coronation, for a single day.

Mr. Asquith was not discomfited : the facts, the miserable facts, might indeed be against him, but

<sup>1</sup> *Speeches*, pp. 234-6.

the power of assertion remained. "Yes," he replied, "but then came that litigation. It was at this time, in the sixth year of Henry VIII., that the duke brings his action of which we have heard so much, and it was clearly the opinion of the judges (whatever one may say about their reasoning on the other parts of the case) that he was entitled." But "entitled" *how*? As heir by descent to an office in fee? Not a bit of it. Mr. Asquith himself had taken his stand, we saw, on Keilway's report, and Keilway states that the judges held that the office should

have continuance in the Duke notwithstanding that one of the three manors has come to the hands of our Lord the King; for otherwise it will ensue that the Duke will have the two other manors without doing any service for them, and so the Duke is compellable at the pleasure of the King to do and exercise the office.<sup>1</sup>

Here is no office in fee, like that of the Great Chamberlain; if the Duke has a right to claim the office, it is not as the heir in blood of former High Constables: it is as the tenant of certain manors. And even so his claim might fail; for "still," the judges said, "the King at his pleasure may refuse the service of the Duke in exercising of the said office." Mr. Asquith, in short, could only appeal to the judges' opinion in the Duke's case by abandoning his initial point, namely that the office was held in fee "like the office" of Great Chamberlain. And so we end, as we began, in "the muddle of the law."

It is not, perhaps, for a mere historian to criticise

<sup>1</sup> *Speeches*, p. 91.

the majesty of the law, the system by which, under the guise of justice, a verdict may depend on the brilliancy of the advocate rather than on the cogency of the facts. The principle is older than Cicero, older even than Demosthenes. From the advocate's point of view it is no doubt ideal : its only drawback would seem to be that some may be at times deterred from availing themselves of its benefits. At the bar of history there are no pleaders, for their arts would be exercised in vain : it is not for assertions that history asks ; she seeks for facts alone.

## (4)

The Lord Abergavenny's case. <sup>1</sup>

The whole doctrine on which is based the right to baronies by writ,—the doctrine that a writ followed by a sitting creates a barony in fee, descendible to heirs of the body.—rests, in the last resort, on a famous *dictum* of Coke's, a *dictum* admittedly founded on 'the Lord Abergavenny's case.'

It is only necessary to cite the latest writer on the subject, by whom the law upon this point is laid down as follows :—

## CREATION OF BARONIES BY WRIT AND SITTING.

The law is well settled that if a writ of summons to Parliament, in the form usual in the case of temporal peers, has been issued to a commoner, and the person so summoned has, in response to such summons, taken his

<sup>1</sup> This case (1610) must be carefully distinguished from the contest for the barony of Abergavenny, which had come to an end in 1604.

seat in the House of Lords,<sup>1</sup> and it does not appear that the summons was issued to him merely as eldest son of a living peer or peeress in respect of one of his parents' peerages, the person so summoned and sitting<sup>1</sup> is to be taken thereby to have acquired what is called a barony by writ, descendible to the heirs general of his body, and this is so even though the summons was issued to him by mistake.

The law, as thus defined, was finally settled in 1673;<sup>2</sup> and on the principle explained at p. 22<sup>3</sup> must be taken to have been the law ever since the model Parliament that sat in 1295.<sup>4</sup>

It is fully recognized by Lord Coke in his Institutes (I, 16 b).

There, after pointing out two different modes of creating peerages, he says: "Creation by writ is the ancients way, and here it is to be observed that a man shall gain an inheritance by writ..... The direction and delivery of the writ to him maketh him not noble..... and this writ hath no operation until he sit in Parliament, and thereby his blood is ennobled to him and his heirs lineal, and thereupon a baron is called a peer of Parliament" (See also the *Abergavenny case*, 12 Co. Rep.).<sup>5</sup>

In this statement of the law, convenient and compendious though it is, one may venture, perhaps, to take exception to the words "recognized by Lord Coke." For in this paper I hope to show that the words "*invented* by Lord Coke" would

<sup>1</sup> These statements require to be modified by the addition that the person sitting need not be the person first summoned, but might be his successor (see below).

<sup>2</sup> i.e. in the Clifton case in 1674 (1673/4).

<sup>3</sup> A reference to the Earldom of Norfolk case (1906).

<sup>4</sup> It was questioned in the Committee for Privileges on the Fauconberg case whether this should be accounted the first valid Parliament, as had been supposed. This point will be discussed below, and it will be shown that the House has not accepted 1295 as the retrospective limit.

<sup>5</sup> Palmer's *Peerage Law in England*, p. 38. Cf. *Cruise on Dignities* (1823), pp. 70 *et seq.*; Courthope's *Historic Peerage*, pp. xxviii *et seq.* Pike's *Const. History of the House of Lords*, pp. 128, 131, etc., etc.

more suitably apply to his *dictum* in the First Institute. That *dictum* rests, as I have said, on the Lord Abergavenny's case, which established, or is alleged to have established, in Cruise's words, the principle that

A writ of summons has not the effect of conferring a dignity on the person summoned till he has actually taken his seat in parliament by virtue of such writ ; so that where a person was summoned to parliament, by such a writ, and died before the parliament sat, it was resolved that he was not a peer.<sup>1</sup>

" Lord Abergavenny's case," unfortunately, is known to us from Coke's twelfth report alone. For the questions sent to the judges and their decision upon those questions we are wholly and solely dependent on the accuracy of Coke's statements. In the "Lords' Reports on the Dignity of a Peer" (1820, 1822) their accuracy was called in question, though very temperately and cautiously, doubtless because Lord Redesdale, whose views they are known to reflect,<sup>2</sup> recognized, rightly or wrongly, in Coke's report the root, as I stated at the outset, of that accepted doctrine on baronies by writ which he vainly set himself to overthrow.<sup>3</sup>

A few years later, in the De L'Isle peerage case, he allowed himself to speak with more freedom, interrupting the petitioner's counsel's appeal to the *dictum* in the First Institute as follows :—

*Lord Redesdale.* What is the authority he refers to in support of that proposition ?

*Mr. Hart.* In Lord Abergavenny's case.

<sup>1</sup> *Op. cit.* p. 72.

<sup>2</sup> Palmer, *Op. cit.* p. 26.

<sup>3</sup> *Ibid.* pp. 40-41.

*Lord Redesdale.* There was no such person as that referred to in that case. It is perfectly clear that my Lord Coke has somehow or other confounded himself for there was no such person as he describes.

*Mr. Hart.* If that was the case, he has confounded me.

*Lord Redesdale.* I only mention it to show that, however great a man he was, in the multitude of cases which he collected he has made some gross blunders, and this was one.<sup>1</sup>

This outspoken statement aroused the indignation and, I think we may fairly say, the alarm of Harris (afterwards Sir Harris) Nicolas, who was himself a peerage counsel, and who saw the danger to peerage "business," which had promised to become brisk, if his lordship were successful in assailing the doctrine that a writ and sitting created a barony, descendible to heirs general, before the days of Richard II. Hence his well-known monograph on the claim to the barony of De L'Isle,<sup>2</sup> in which

It was his first object to establish the truth of the case reported by Lord Coke in the 8th Jac. I, when the Judges decided that a writ and sitting created an hereditary barony, because the suspicion entertained by a Noble Lord might have influenced his opinion. Of the general accuracy of that report such evidence has been adduced in the notice of it in the Appendix as to prove that the doubts which have been expressed are unfounded; whilst the notes present many decisions before that case occurred which are strictly consonant with the exposition of the law on that occasion (p. xiii).

The Appendix spoken of deals with—

The case of Neville, Lord Abergavenny, in the 8th Jac. I, in which the Judges pronounced the law relative

<sup>1</sup> Nicolas, *Barony of L'Isle*, p. 207.

<sup>2</sup> *Report of proceedings on the claim to the Barony of L'Isle* (1829).

to baronies by writ, with remarks tending to remove the doubt of that case having occurred (p. xvii).

It collects in a convenient form Lord Coke's report of the case, the Committee's criticism thereon, and the author's attempted vindication.<sup>1</sup> Sir Francis Palmer, upholding Coke as against the Lords' Committee, claims that "the facts brought to light by Sir Harris Nicolas in his report of the *Lisle Peerage Case* afford cogent evidence to show that there is no ground for such a reflection on Lord Coke's credibility."<sup>2</sup>

Now let us clearly understand what the facts were that Nicolas brought to light. After complaining that the Lords' Committee "impute to that great Judge the publication of a deliberate and gratuitous falsehood," he proceeded thus:—

"This consideration might have obtained greater respect for his statement than was shewn to it by the Lords' Committee or by the learned Lord who adverted to it in the L'Isle claim ; more particularly as the former admit the possibility that in the proceedings on the bills brought in, in the 8th Jac. I, to enable Lord Abergavenny to alienate certain lands, "some objections may have been made to some assumption of name of dignity without sufficient warrant, and the Committee may have consulted the learned persons mentioned by Sir Edward Coke ;" but their lordships add "that there is no trace in the Journals of any opinion given by those learned persons, or of any question put to them by the House or by a Committee." The result of a search in the *Lords' Journals* has proved, however, that the Lords' Committee are as fallible as they consider Lord Coke to have been ; for it appears

<sup>1</sup> *Op. cit.*, pp. 297-308.

<sup>2</sup> *Peerage Law in England* (1907), p. 200.



that a question *was raised* in the 8th Jac. I, as to the proper title of Lord Abergavenny's father.

.....On Saturday the 30th of June (1610) the Lord Chancellor declared that in the Bill for enabling the Lord Bergeveny and Sir Henry Nevill his son to alien certain lands are some small errors : *videlicet* 'the said county of Norfolk,' whereas that county was not before mentioned in the Act : also a *mistaking, as is conceived, in the title or addition given to the Lord Bergeveny's father* ; whereupon it was agreed that the said Bill shall be recommitted, etc. (p. 306).

And that is all. I have no doubt that Harris Nicolas honestly thought that his discovery (which needed nothing more than a reference to the Index to the Journals) had overthrown the Committee ; but, if so, it only shows that he could not think clearly. For their statement, quoted by himself, remains wholly unshaken : "there *is* no trace in the Journals of any opinion (being) given by those learned persons, or of any question (being) put to them by the House or by a Committee."

All he has shown is that there was doubt as to the style which ought to be assigned to Lord Abergavenny's father ; and this, the Committee had admitted, was perfectly possible. As a matter of fact, that doubt was bound, we shall see, to arise.

But we can go further still. We may admit, with the Lords' Report, that "the Committee may have consulted the learned persons mentioned by Sir Edward Coke on the subject ;" indeed, I agree with Sir Harris Nicolas that we ought not, without sufficient proof, to impute to Coke deliberate invention of the statement that certain judges, *of*

whom *he was one*, were consulted on this occasion (1610) by the Committee. But even then we shall be no nearer to establishing, as he claimed to establish, the fact that "those personages pronounced the opinion which Lord Coke has attributed to them" (p. 305).

The points we have to examine are two:—

- (1) What was the question put to the judges?
- (2) What was the opinion they gave in answer?

On these two points Coke's report is clear:—

In the parliament a question was made by the Lord of Northampton, Lord Privy Seal, in the Upper House of Parliament, that one Edward Nevill, the father of Edward Nevill, Lord of Abergavenny, which now is, in the 2nd and 3rd of Queen Mary, was called by writs to parliament, and died before the parliament. *If he was a baron or no, and so ought to be named, was the question*:<sup>1</sup> and it was resolved by the Lord Chancellor, the two Chief Justices,<sup>2</sup> Chief Baron, and divers other Justices there present, that the *direction and delivery of the writ did not make a baron or noble until he did come into parliament and there sit according to the commandment of the writ; for until that the writ did not take its effect*,<sup>3</sup> and the words of the writ were well penned, which are: "Rex et Regina etc. Edwardo Nevil de Abergaveney Chivalier, Quia de advisamento et assensu concilii nostri pro quibusdam arduis et urgentibus negotiis statum et defensionem regni nostri Angliæ concernentibus, quoddam Parliamentum nostrum apud Westmonasterium 21 die Octobris proximo futuro teneri ordinavimus, et ibidem vobiscum" etc.<sup>4</sup>

Is this statement true or false? It is proved by internal evidence to be altogether false. To Coke's

<sup>1</sup> The italics are mine.

<sup>2</sup> Of whom Coke was one.

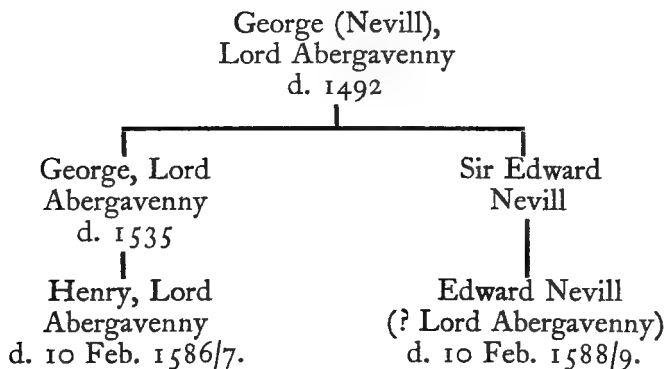
<sup>3</sup> The italics are mine.

<sup>4</sup> Cited from Coke's 12th Report by Nicolas (*Op. cit.* pp. 297-8).

statement of the facts the Lords' Committee marshalled a series of unanswerable objections.<sup>1</sup> They pointed out that the person summoned "in the 2nd and 3rd of Queen Mary" as Lord Abergavenny was not *Edward* the *father* of the peer sitting in 1610, but *Henry* the *cousin* of that peer; that even if it had been Edward, he lived long afterwards; that the writ printed by Coke cannot have been produced. It is, in short, a concoction.

If these objections are valid, as to which there can be no dispute, it follows that the point stated by Coke cannot have arisen and that the famous opinion on this writ as inoperative, without a sitting upon it, to create a man a baron, can never have been given.

A short chart pedigree will make the case clearer.



The question in 1610 was the *status* of Edward Nevill (then deceased), who became heir male of the family in 1587, and succeeded his cousin in possession of Abergavenny, but only survived him

<sup>1</sup> Appendix to First Report, pp. 482-6.

two years. He is known to have *claimed* the title (as against the heir-general),<sup>1</sup> but his claim was pending at his death, and the question was not settled till 1604, when his son Edward became, by what is recognised as a compromise, Lord Abergavenny. It was the elder Edward who was falsely alleged to have been summoned as Lord Abergavenny in 1555.

Nicolas, unable to rebut the objections of the Lords' Committee, was driven to suggest that a writ, of which there is no trace, might have been issued to Edward Nevill (the father) in 1588 for the Parliament summoned for November 12 in that year, "and that Lord Coke, or his copyist, accidentally transcribed and printed the writ of the 2nd and 3rd Ph. and Mary to Henry Nevill for the one which is presumed<sup>2</sup> to have been issued between the 28th and 31st Eliz. to Edward Nevill under the idea that he had succeeded to the barony of Abergavenny as heir male of the last lord." But he had to admit, of this supposed writ, after search had been made, that "no notice of a writ having been issued to Edward Nevill between the 28th and 31st Eliz. is on record."<sup>3</sup>

The presumption, however, against his guess is based on far more than merely negative evidence. Edward Nevill was claiming the title as against the heir-general, and if the Crown had summoned him by writ as Lord Abergavenny, in 1588, it would, by so doing, have decided the claim in his favour. But the question was not decided till

<sup>1</sup> See p. 79 above.

<sup>2</sup> i.e. by Nicolas.

<sup>3</sup> *Op. cit.*, p. 308.

1604, and throughout the long controversy we have no allusion to such a writ, although its issue would obviously have been appealed to by Nevill's counsel as a recognition by the Crown of the rights of the heir-male.<sup>1</sup> The somewhat desperate suggestion made by Harris Nicolas has not only, therefore, nothing to support it, but is also at direct variance with the known history of the claim.

We have now cleared the ground and shown that Coke's report cannot be accurate as it stands. What then really did take place, assuming that the judges, as he states, were consulted on this occasion? To this question, it would seem, no answer has been attempted. And, indeed, to attempt that answer is no easy matter; for the lower criticism will not help us: we must have recourse to the higher.

In the first place, I would suggest, with the utmost confidence, the true source of Coke's date, "the 2nd and 3rd of Queen Mary." It was not, as he states, the date of a writ to Edward Nevill, but that of *the Act of Parliament under which Edward "took."* This all-important Act, essential to Edward's title, is printed in one of the Appendices to the Reports of the Lords' Committee.<sup>2</sup> It enabled Edward to succeed his cousin Henry, Lord Abergavenny, in the family estates, under the entail on heirs male created by Henry's father, in spite of the attainder of Edward's father. This Act would have no bearing on questions of writ and sitting, but if, as I shall contend, the question

<sup>1</sup> See pp. 78-88 above for the history of this controversy.

<sup>2</sup> Vol. IV, pp. 1001-5 ("An Act concerning the restitution of the heirs males (*sic*) of Sir Edward Nevill, Knight").

was one of *tenure*, it would obviously bear upon the case.

To ascertain what really happened, we must see what the position was in 1610. It was only six years since Edward, Lord Abergavenny, had obtained for himself that title, not *vigore legis*, but by the King's favour. The House, unable to arrive at a decision,<sup>1</sup> had finally referred the rival claims to the King, inviting him to ennoble "both parties by way of Restitution."<sup>2</sup> The King agreed and left the House to select which of them should have the barony of Despencer, and which the barony of Abergavenny. Nevill was voted that of Abergavenny, the result of this curious compromise being that the *status* of the barony was left in an ambiguous position. Nevill sat in the seat of his predecessors, enjoying their high precedence, and yet his claim to succeed as of right had not obtained recognition. Now the only right he could allege to the old barony was tenure,<sup>3</sup> and tenure was, as a fact, the right which he and his father before him had put forward in their claims. If then, in 1610, he claimed to be holding the old barony, he could only do so on the ground that it was a barony by tenure.<sup>4</sup> But

<sup>1</sup> "The Question nevertheless seemed not so perfectly and exactly resolved as might give clear and undoubted satisfaction to all the consciences or judgments of all the Lords for the precise point of right." (*Lords' Journals*).

<sup>2</sup> This remarkable phrase is pointedly used three times over in the entry. The House had actually voted on the question whether the King should be asked to ennoble them by way of Restitution or by Creation, and there was a majority for 'Restitution' (see also *Lords' Reports*, I, 436-7.)

<sup>3</sup> He could not claim it as a barony by writ, for he was not heir-general.

<sup>4</sup> One cannot treat very seriously the contention of the Lords' Committee that if Despencer (1264) was ranked above Abergavenny, the latter could not be a barony by tenure (I, 440; II, 88). For the ranking of these ancient baronies was altogether anomalous.

this obliged him to claim that his father, on becoming seised of the Abergavenny estate, had thereby become Lord Abergavenny. Consequently, when he had to describe him in the private family Act, he assigned to him that title. And if that Act had passed without question, he would have secured by a side wind the recognition of his claim.

Now we see how much must have turned on "the title or addition given to the Lord Bergeveney's father,"<sup>1</sup> and why the question had to be referred to a formidable bench of Judges. The whole *status* of the barony was at stake: their answer would decide whether or not it was a barony by tenure, which the mere seisin of Abergavenny would bestow upon its holder.

The *status* of the elder Edward, whose style was thus in dispute, had been, even in his own day, ambiguous. He obtained livery of Abergavenny as "Edwardus Nevill, armiger, *alias dictus* Edwardus Nevill, dominus Bergavenny" (1588), and in the administration granted to his younger son he is styled "Edward, Lord Abergavenny, *alias* Edward Nevill Esquire" (1590). On the other hand his *Inquisitio post mortem* styles him only "Edward Nevill, son and heir of Sir Edward Nevill, Kt." (1589). The modern writer on peerage history is equally puzzled by his *status*: *The complete Peerage*, for instance, holds that he "certainly may be considered entitled to be reckoned as Lord Bergavenny,"<sup>2</sup> on the ground of the proceedings in 1604 and their result.

<sup>1</sup> *Lords' Journals*.

<sup>2</sup> *Op. cit.* I, 19. This is also the reference for the documents cited in this paragraph.

I will now, therefore, give my answer on the first point that we have to decide: what was the question put to the judges?<sup>1</sup> We have seen that it could not possibly be, as Coke states it was,—did a *writ without a sitting* make a man a baron? For no writ had been issued. It was, I believe, wholly different: the real question, I hold, was—did *tenure without a writ* make a man a baron?

If once this answer be accepted, everything falls into place. It exactly fits the facts of the case, for the claim of the elder and of the younger Edward had been that tenure had that effect, and the question had been virtually left open by the anomalous proceedings in 1604. But what is specially noteworthy and important is that it also fits the records<sup>2</sup> given by Coke himself as those bearing on the case. And this the question stated by himself entirely fails to do.

For what are the two documents which Coke here selects for printing in full? One is a statement that those who hold a sufficient estate in lands to constitute a *Baronia integra* were Barons and ought to be summoned, a statement which could only be used to prove that tenure made a man a Baron. Coke, indeed, himself says of it that “by this it appears that every one who hath an entire barony may have of right and of course a writ to be summoned to parliament.” The other was the well-known statement in the Preface to Camden’s *Britannia* that Henry III, towards the close of his reign, ordained that only those whom the King

<sup>1</sup> See p. 172 above.

<sup>2</sup> I here use this term in a general sense.



chose to summon should come to Parliament, "which act or statute," Coke proceeds, "continues in force to this day, so that now none, although that he hath an entire barony, can have a writ of summons to parliament without the King's warrant, under the Privy seal at least." As for this document, it could only be used to prove that tenure was *not* sufficient to make a man a Baron. On what was alleged to be the question by Coke, namely whether a writ of summons was sufficient, without a sitting, to make a man a baron, neither of these documents could have any bearing whatever.

A brief interruption is here necessary in order to deal more fully with these two documents. The Lords' Committee speak of the first as "The Reference to a Passage in the book called *Modus tenendi Parliamentum*, now considered as a forgery" (I, 485). But Coke's quotation does not tally with the known text of the *Modus*, although the principle is virtually the same in both.

## COKE.

cum olim senatores e censu eligebantur, sic Barones apud nos habiti fuerunt qui per integram baroniam terras suas tenebant, sive 13 feoda militum et tertiam partem unius feodi militis,<sup>1</sup> quolibet feodo computato ad £20, quæ faciunt 400 marcas denarii, erat valentia unius

## MODUS.

summoneri et venire debent omnes et singuli..... barones..... scilicet illi qui habent terras et redditus... ..... ad valentiam unius baroniæ integræ, scilicet tresdecim feoda et tertiam partem unius feodi militis, quolibet feodo computato ad viginti libratas, quæ fa-

<sup>1</sup> Compare p. 82 above.

baroniæ integræ; et qui ciunt in toto quadringentas  
 terras et redditus ad hanc marcas; et nulli minores  
 valentiam habuerint, ad par- laici summoneri nec venire  
 liamentum summoneri sole- debent ad parliamentum  
 bant.<sup>1</sup> ratione tenuræ suæ.<sup>2</sup>

Stubbs wrote in one place of "the proved worthlessness of the *modus*;"<sup>3</sup> and though he accepts it in his *Select Charters* as "a fairly credible account of the state of parliament under Edward II," the former phrase is by no means too strong for its doctrine on dignities by tenure, especially the view that the tenure of lands to the annual value of £400 made a man an earl, and to that of 400 marcs, a baron.<sup>4</sup> My own investigations have placed its origin so late as 1386 or thereabouts.<sup>5</sup> Coke not only confused the *Modus* with the treatise on the Marshal's office,<sup>6</sup> but crowned his muddle by writing:—

Many very ancient copies you may find of this *Modus*, one whereof we have seen in the reign of H[enry] 2, which contains the manner, form, and usage of Gilbert de Scrogel, marshall of England, etc. (4th Inst. xxi).<sup>7</sup>

My criticism does not stand alone: his treatment of another medieval work has been thus condemned:—

Coke (*First Inst.* p. 13), who quotes the *Dialogus* repeatedly, refers to the author as '*Ockam*.' Now as Coke knew the date of the treatise, and ought to have

<sup>1</sup> Coke's 12th Report.

<sup>2</sup> Stubbs., *Select Charters*.

<sup>3</sup> *Const. Hist.* III, 431.

<sup>4</sup> This passage is cited by Stubbs, *Op. cit.* (1874) I, 365.

<sup>5</sup> *The Commune of London and other studies*, p. 318.

<sup>6</sup> *Ibid.*, p. 313.

<sup>7</sup> *Ibid.*, p. 304.

known the date of William of Ockham, it was a bad blunder to have confused the two.<sup>1</sup>

With regard to Coke's other document, the Lords' Committee observe :—

Sir Edward Coke does not state his authority for asserting the existence of the law which he thus represents as made by Henry the Third. The Committee have observed..... that of such a law, elsewhere asserted, they had found no evidence.

Coke, as I said above, took the passage from Camden. Hallam, dealing with the Baronage, subsequently wrote of the "nameless author whom Camden has quoted," and pointed out that "no one has ever been able to discover Camden's authority," and that "the unknown writer quoted by Camden seems not sufficient authority to establish his assertion." <sup>2</sup> Lastly, Mr. Pike has expressed the general conclusion thus :—

The statement is made in the Preface to Camden's *Britannia*, but the existence of the alleged law is not precisely indicated, and it has never been traced to any document of authority. <sup>3</sup>

This, indeed, I consider an under-statement. Coke, however, boldly asserted that this (imaginary) "act or statute continues in force to this day!"

It was necessary to glance at the nature of the authorities on which Coke used to rely; but we will now turn to the records to which he refers in his report. These were examined by the Lords' Committee (I, 395-6, 483), and it is, I would

<sup>1</sup> *Dialogus de scaccario* (1902), p. 9.

<sup>2</sup> *Middle Ages* (Ed. 1860), III, 7, 9.

<sup>3</sup> *Const. Hist. of the House of Lords*, p. 93.

submit, a noteworthy fact that they thus commented upon them :—

The three cases cited by Coke seem to prove that the fact of summons to Parliament was necessary to constitute the Lord of Parliament,.....

The cases thus cited by Coke tend to prove that in the reign of Edward the Third, and afterwards in the reign of Henry the Sixth, the Judges conceived that possession of land holden by Barony did not constitute a Lord of Parliament; but that summons to Parliament was evidence that the person summoned was a Lord of Parliament. (I, 396).

Noteworthy, because it signally, though quite unconsciously, confirms the view of the case which I here put forward, but which was not in the minds of the Committee and had not even occurred to them. It is my suggestion that the question in the case was whether *tenure without a summons* could constitute a man a Baron.

Such unconscious testimony is infinitely more convincing than would be my own opinion on what these cases prove. I will, therefore, only add that, as to one of these cases, that of Sir Ralf Everden, “no person of the name of Everden was ever summoned to parliament as a baron,”<sup>1</sup> so that his case could not bear on the effect of a writ without a sitting, while its true bearing, in the view of Nicolas, is that it “corroborates the opinion that such summons was not the necessary consequence of holding lands by barony in the fourteenth century.”<sup>1</sup> In the view of Mr. Pike

<sup>1</sup> Barony of L'Isle, p. 130 *note*, where the brief report of the case in the Year Book of 48 Edw. III. is printed.

the case proves that, at that date, "a Baron was still a person whose status could be proved only by his tenure."<sup>1</sup> The case, at any rate, must have been used as bearing on tenure and its effect. With regard to another of Coke's cases, "35 Hen. VI, 46, 48," he states that in the year-book "he (a baron) is called a peer (*sic*) of parliament." The word, however, in the year-book is "*S(ei)niors de Parliam(en)t.*" Coke, with his usual careless inaccuracy, has rendered this not "lord" but "*peer* of Parliament." The case, moreover, has no bearing on the question alleged to be at issue, namely the effect of a writ under which there had been no sitting.

I need only add that if the question alleged by Coke to have been put to the judges is, as I have shown, fictitious, their alleged answer to that question must be fictitious also.<sup>2</sup>

Such then is my case. The charge is grave enough: it is that Coke has here substituted for the question put to the judges, of whom he was one, an entirely different question invented by himself, has concocted a fictitious writ to support the tale he tells, has recorded a no less fictitious Resolution as the judges' answer to that question, and finally, has based thereon a proposition of law. Well might Bacon caustically say that "my Lord Coke's" reports "hold too much *de proprio*." The *Dictionary of National Biography* is well within the

<sup>1</sup> *Op. cit.*, p. 95.

<sup>2</sup> Compare the note to Anderson's report of Shelley's case: "Le Attorney Master Cooke ad ore fait report en print de cest case ove argument et lez agreements del Chancellor et autres juges, mes rien de c' fuit parle en le court ne la monstre" (1 And. 71).

mark in its guarded statement that he sometimes "gives a wrong account of the actual decision, and still more often the authorities which he cites do not bear out his propositions of law."<sup>1</sup>

It is for those who cannot bring themselves to accept the charge as proved to explain as best they can his demonstrated errors of fact and, above all, his invented writ, which has actually found its way into his "Institutes" themselves.<sup>2</sup> Nicolas, we saw, endeavoured to do so; and he failed.

"A little while ago," observed the Governor of Southern Nigeria, about the close of last year, "we discovered the existence of a terrible ju-ju which had been established by one of the chiefs." Happily he was able to add that "the ju-ju has been completely broken." I doubt if even Sir Francis Palmer could still assert the authority of "the long ju-ju of the law."<sup>3</sup>

"The Lord Abergavenny's case" is worth the time we have bestowed on it; firstly, because it affords a test, a clinching test, of Coke's "authority;" secondly, because, as we shall see, it is still of cardinal importance in claims to baronies by writ. On the former point it has been clearly shown that the writer whose "intrinsic authority" has helped to mould our law, and whom the members of his profession have deemed their "oracle" itself,<sup>4</sup> was a witness so untrustworthy, an "authority" so worthless that an historian who

<sup>1</sup> See p. 128 above.

<sup>2</sup> I, 16 b. Its identity is proved by the date (21 October) it contains.

<sup>3</sup> See p. 108 above.

<sup>4</sup> "It became all the rest of the lawyers to be silent whilst their oracle was speaking." 5 *Mod. Rep.* VIII (cited in *Dict. Nat. Biog.*).

relied upon his statements would deserve ridicule and contempt. On the latter there is much to say, much that will require attention.

The only point alleged by Coke to have been settled in the case we are discussing is—

That the direction and delivery of the writ did not make a baron or noble, until he did come into parliament and there sit, according to the commandment of the writ ; for until that the writ did not take its effect..... the writ hath not its operation and effect until he sit in parliament (12th Report, 70)

But to his own proposition of law that a sitting as well as a writ must be proved there has been added by ‘the scribes and pharisees’ the further and burdensome proposition that the sitting must be proved by “the record of parliament,” and by that alone. This rule, although it has proved of great practical convenience in restricting the number of peerage claims, rests on no sure foundation. It was the subject of keen dispute in the De L’Isle peerage case, when it was firmly upheld by the Attorney-General against the elaborate arguments of Mr. Hart and Mr. Shadwell<sup>1</sup> for the claimant. It is needless to travel anew over the ground they covered ;<sup>2</sup> and the point, perhaps, is one that ought to be left to lawyers.<sup>3</sup>

One may, however, just explain what is the point at issue. Coke, no doubt, in his ‘first Institute,’ lays it down that “if issue be joined in

<sup>1</sup> Afterwards Lord Chancellor of Ireland and Vice-Chancellor.

<sup>2</sup> See, for the Attorney’s argument, Nicolas’ Report of the case, pp. 146-155, and, for those of counsel, pp. 55-67, 121-131, 180-190, 206-214, 224-233.

<sup>3</sup> The Attorney General claimed to have given special attention to peerage law.

any action whether he be a baron etc. or no, it shall not be tried by jury, but by *the record of parliament*, which could not appear, unless he were of the parliament" (16 b). It is argued that as (according to Coke) he could not be a peer, unless there had been a sitting, that sitting must be proved by "the record of parliament." But Coke was lamentably loose in his language, and when we refer to his Reports for the case on which he relies, we find him, in his comments, leaving out the vital words "of parliament." He there puts the proposition thus:—

without *writ* none can sit in parliament : and with this agree our books, for *una voce* they agree that none can sit in parliament as peer of the realm without *matter of record*, and if issue be taken whether baron or no baron, earl or no earl, this shall not be tried per pais,<sup>1</sup> but by *the record* by which it appears that he was a peer of parliament, for without *matter of record* he cannot be a peer of parliament (12th Rep. 70).

Of the cases cited for this proposition that of the Earl of Kent (Ass. pl. 6. 22) contains a plea that earl or no earl was not an issue triable at the Assizes, because it was not in the Conuzance of the Country (i. e. 'pais'), "but was of Record.... who is earl, and who not, cannot be known but by Record."<sup>2</sup> This obviously cannot apply to the record of a *sitting*, for an Earl was not created by writ of summons. An even more important passage, which seems to have been overlooked, is found in Coke's 6th Report, 52 (The Countess of Rutland's case.) We there read—

<sup>1</sup> i. e. by a jury.

<sup>2</sup> *Lords' Reports*, I, 396.



that duke or not duke, earl or not earl, baron or not baron, shall not be tried by the country but by *record*; for if they be lords of parliament, it appears by *record*; and therefore *by record, viz. by the King's writ*<sup>1</sup> it ought to be certified.

This passage, which seems to identify the "record" of which Coke speaks with "the King's writ" definitely, is immediately followed in 'Cruise' by one which appears to me to have a most important bearing on the point. Lord Chief Justice Holt, in the famous Banbury case (1694), delivered himself as follows in the Court of King's Bench:—

No man can be a peer without *matter of record*; for it ought to be *either by letters patent* under the great seal, which is the most common way at this day, and by which the patentee is ennobled immediately, though he had never sat in Parliament. *Or by writ*, by which the party is not ennobled until he sit in parliament; and the which is countermandable by death; or by the King, by a *super-sedeas*, before the sitting in Parliament. *But in both cases his nobility commences by matter of record, and is matter of record.* And when a man pleads any such matter, he ought to show a *record* of it, that is, show *the letters patent* of his creation, or otherwise show *some writ on record*, by which he or his ancestors, under whom he claims, have been created peers, or summoned, or sat in parliament. For peerage is not a matter in *pais*, to be gained by prescription,..... But there ought to be some *matter of record* of it;..... And in this case, earl or not earl shall be tried by *record*; *scilicet*, he ought to show some *record* by which he or his ancestors have been ennobled; nobility not being a matter which may be gained by usage in *pais*.<sup>2</sup>

This language is extremely definite, and two

<sup>1</sup> See Cruise, *op. cit.* p. 259.

<sup>2</sup> Skinner's Reports cited by Cruise. The italics are mine.

things are clear from it: (1) that the Lord Chief Justice was taking his law throughout from Coke; (2) that by Coke's "matter of record" he understood only (A) a patent or (B) a writ of summons. That the phrase included a proof of sitting—and, even more, that this proof must be given from "the record of parliament"—are additions of which we find no recognition in his words. To this I think we may add that he read "the Lord Abergavenny's case," as reported by Coke, as implying that a writ of summons, in the absence of evidence of death or of a writ of *supersedeas* (both of which would afford disproof of sitting) was sufficient evidence of creation.

Some hundred and forty years earlier, the issue, peer or no peer, had been raised in a court of law. The fact, which appears to have escaped notice, is known to us, not from a report, but from a chronicler only.

Tuesday the 30 June (1556) William West calling himself De la Ware was arraigned at the Guildhall in London for treason, but in the beginning of his arraignment he would not answer to his name of W<sup>m</sup> West Esq. but as Lord Delaware, and to be tried by his peers, which the judges there with the heralds proved he was no lord *because he was never created nor made lord by any writ to the Parl(iament) nor had any patent to show for his creation, wherefore that plea would not serve, etc., etc.*<sup>1</sup>

Here the issue is dealt with in precisely the same way; prove, said the judges, that you are ennobled by producing a patent or a writ of summons. This is the evidence that was asked for by

<sup>1</sup> *Wriothesley's Chronicle*. The italics are mine. See also p. 59 above.

Chief Justice Holt, no more and no less. Coke, his Reports and his Institutes, had not altered the law: it did not ask for a proof of sitting.

It is singular that the two passages I have quoted above from 'Cruise' were not cited by Counsel in the De L'Isle case, although they struggled hard to demonstrate that the *sitting* need not be proved by a "record of parliament," and that Coke had been misunderstood; for they made use of Cruise's work. The case on which they did rely, and which had been cited by Coke for "the Lord Abergavenny's case," appears to me to be too doubtful to prove their point. It is of the reign of Henry VI, and Fortescue (the judge) is alleged to have said "produce your writ," from which it was argued that he would have accepted the writ alone as proof of peerage. But, as Lord Redesdale observed, "it is a very loose case," and it is not absolutely clear to me that the "b're" Fortescue required was a writ of summons, though he did insist on "matter de record."<sup>1</sup> Indeed, one of the counsel for the claimant admitted that the court's conclusion was "hardly intelligible" to himself.

Mr. Pike, I find, has discussed the meaning of the phrase "record of parliament" in Coke's 1st Inst. 16 b, on which the accepted doctrine is based, and considers it "not quite clear" what Coke meant by it. He aptly adduces another case in which Coke<sup>2</sup> "uses language which also lacks precision" writing that the issue, peer or no peer, "shall be tried by the record *in Chancery* which

<sup>1</sup> Nicolas, *Barony of l'Isle*, pp. 129-131, 188-9.

<sup>2</sup> 12th Rep. 96 (The Countess of Shrewsbury's case, 10 James I).

imports by itself solid truth," but writing as a lawyer, prefers "a far more precise and intelligible statement of the law..... in later times" (2 Barn. and Cres. 871-875), asserting that what is to be "tried by the record of Parliament" in the case of a party claiming to be a baron by writ, is "not whether he was summoned, but whether he sat."<sup>1</sup> With deference, however, one may submit that this was merely the extreme development of what was a later excrescence due to the grievous looseness and confusion of the language employed by Coke.

I do not feel at all sure that the House even insisted on any proof of sitting at all till a good deal later than seems to be supposed. In the Sandys case the Committee for Privileges reported to the House at some length the various writs by which the Petitioner's ancestors had been summoned, but said nothing of proofs of sitting. And yet we read of "the House being satisfied of his Lordship's title to the Honour" without further evidence.<sup>2</sup> Again, even so late as 1690-1691, the earl of Thanet claimed the barony of Clifford on the ground of the summonses directed to ancestors, whose heir he was, but said nothing of proofs of sitting. Nor did the Committee, in their report to the House.<sup>3</sup>

But in claims to peerage dignities the doctrine ripened fast. It is definitely alleged in Cruise's work that "it was resolved by the House of

<sup>1</sup> *Const. Hist. House of Lords*, pp. 127-8.

<sup>2</sup> *Lords' Journals*, 4 May 1660.

<sup>3</sup> 'Collins' pp. 306, 311, 318, 320.

Lords," in the Frescheville case (1677), "that a single writ of summons issued to a person in the reign of King Edward I, *without any proof of a sitting under it*, did not create an hereditary barony." <sup>1</sup> And Sir Francis Palmer cites the case as establishing the necessity of a proved sitting "under the writ of summons relied on as creating the barony." <sup>2</sup> Courthope similarly alleged that

a sitting under the writ was necessary, and as the onus of proving such sitting rested with the party claiming the dignity, and no such proof being extant in the case of the said Ralph Frescheville, the claim was not admitted. <sup>3</sup>

But the decision is limited to the words of the Resolution, viz. that the lords "do not find sufficient ground to advise his majesty to allow the claim of the petitioner." In the Lords' Reports on the Dignity of a Peer the Committee guardedly state that "it does not clearly appear what were the grounds of this decision" (II, 29) and even incline to the view that 1297 was considered a date too early for "a writ of summons *and sitting*" to operate as creating an hereditary barony. In this we see, no doubt, the hand of Lord Redesdale.

The point that seemed to weigh most with the Attorney General (Sir W. Jones) in the Frescheville case was that neither Ralph nor any of his descendants "were ever summoned or sat" after this first writ (1297). <sup>4</sup> This was the point he raised in his Report to the Crown. The abstract

<sup>1</sup> *Op. cit.* p. 77. The italics are mine.

<sup>2</sup> *Peerage law in England*, p. 45.

<sup>3</sup> *Historic Peerage*, p. 205.

<sup>4</sup> For our knowledge of Sir William Jones' arguments we are indebted to Cruise (*op. cit.* pp. 77-8).

of his argument given by Cruise is somewhat obscure. That there must be a sitting under the writ he insisted; but, instead of calling on the petitioner to prove that his ancestor *did* sit, he urged that "the not repeating the summons was an evidence of *not* sitting," as if the *onus probandi* lay upon the Crown! Moreover, he had another argument; for he urged that "the truth was that anciently a writ of summons and sitting upon it did not make a baron in fee." That he should have advanced this contention is a most important fact, for it implies that he was doubtful of being able to prove that there had *not* been a sitting, and was prepared to fall back upon the plea that, even if there had been, it still would not have operated, at that early date, to make a man a baron.<sup>1</sup> He further showed his consciousness of weakness by the curious admission that "where writs of summons had been often repeated" they might afford a presumption of sitting,<sup>2</sup> but not "where they never issued but once." In spite, however, of all this, he held in its most extreme form what we have seen to be the modern doctrine on the issue peer or no peer. "If a man sued by the name of a lord, and the defendant denied him to be a lord, this must be tried by the records of parliament. What, by the writs of summons? No, but by his sitting." This is why I said that the doctrine ripened early.

<sup>1</sup> The Attorney was bound by the decision in the Clifton case, shortly before, to which the petitioner had appealed. So he had to argue, like Lord Redesdale in later days, that its action was not sufficiently retrospective to extend to the days of Edward I.

<sup>2</sup> This was the argument pressed afterwards, on behalf of the petitioners, in the De L'Isle and Meinill claims.

The quaintest view of the Frescheville decision is that which is found in the printed Case presented on behalf of the Petitioners for the baronies of Meinill, etc., in 1901. It is there alleged, with much assurance, that —

The case of Frescheville in 1677 rested upon one single summons — January 26, 1296–7 (25 Edward I) to attend the King at Salisbury. That was not a summons to Parliament, and none of his descendants were subsequently summoned. Consequently the case failed quite properly *because there were no valid writs*, and *not* because there was an absence of the technical proof of sitting (p. 21).

... that Parliament was *not* a proper or admitted Parliament; and consequently the De Frescheville case failed, *not* because of the absence of a technical proof of sitting, but because there never was a valid writ whatever (*sic*), and consequently there never *could* have been either sitting in Parliament or Peerage. The Petition rightly failed, but for an utterly different reason than was (*sic*) the one put forward by the Attorney-General in 1892 (p. 22).<sup>1</sup>

Now one point at least is clear about the Frescheville claim, and this is that it did *not* fail for the reason here alleged. The then Attorney General, instead of raising this objection, accepted the writ as valid, and devoted himself to questioning the sitting. Neither in the Lords' Reports nor in Lord Redesdale's judgment on the De L'Isle claim is any doubt expressed as to the validity of the writ.<sup>2</sup>

<sup>1</sup> The italics are all in the printed Case itself.

<sup>2</sup> Its acceptance in the Frescheville case (1677) may be due to its marginal heading, "De Parlamento tenendo apud Sarum." Courthope (*Historic Peerage*, p. 205) notes that no "objection appears to have been raised to the writ of 25 Edw. I" in that case. Dugdale, whose work was published in 1676, wrote that "in 25 Edw. I this Ralph de Frescheville..... had summons

From the Frescheville case Sir Francis Palmer proceeds *per saltum* to that of De L'Isle "reported by Sir H. Nicolas," as "another" instance illustrating the necessity of sitting in pursuance of a summons perfecting a title to barony by writ.<sup>1</sup> According to the learned writer —

there was no proof of any sitting, and the House of Lords held that in the absence of evidence of a sitting pursuant to the writ, the claimant, who claimed title through a daughter and heiress of the son, had not made out his claim.

But not only does the Lords' Resolution contain nothing to that effect: the *rationes decidendi*, as set forth in the 'judgment' of Lord Redesdale (with whom the Lord Chancellor concurred), allege no such ground for rejecting the claim, and do, moreover, allege a ground entirely different. Even before the case was heard, or at least while it was pending, Lord Redesdale had clearly indicated the ground he meant to take. In the 'Fourth Report on the Dignity of a Peer' (July 2, 1825) we read of the De L'Isle claim,

it seems necessary that the House should proceed with much caution in the investigation of a claim founded simply on a writ issued at a very distant period..... a writ of summons is, in itself, merely personal; and it seems to be only *an inference of law, derived from usage*,<sup>2</sup> which has extended the operation of such a writ beyond the person to whom it was directed. When usage is supposed to have first warranted this inference of law, and to

to Parliament amongst the Barons of this Realm" (*Baronage*, II, 6). And it seems to have been admitted in the Mowbray case without question. (See below).

<sup>1</sup> *Peerage law in England*, p. 45.

<sup>2</sup> These italics are found in the Report itself.



have attributed to the mere issuing of a writ to an individual, even if accompanied by proof that that individual sat in Parliament under that writ, the effect of creating a title in that individual to an hereditary dignity descendible to all the heirs of his body, is a question which it may be fit for the House deliberately to consider, and to fix a point of time before which the evidence of issue of a writ, and of sitting in Parliament under that writ, shall not be deemed sufficient evidence of the creation of an hereditary dignity of Peerage ; otherwise claims may be made which have not been thought of for centuries..... The Committee who made the Report of 12th July 1819 have supposed that the Statute of the 5th of Richard the Second might be considered as tending to fix that point of time (pp. 323-4).

In his judgment on the claim (May 18, May 22, 1826) Lord Redesdale adhered to this position.

The inference which I conceive ought to be drawn from that is that at that time it was not understood that the issuing of a writ of summons to a man gained in the person to whom that writ was issued a dignity descendible to his issue.

The law was not understood to be that the issuing of a writ to any person to sit in parliament and a sitting in parliament upon that writ created a right to a descendible peerage.

I conceive that there is strong ground for inferring that such was not the law in the reign of Richard the Second.

Under these circumstances..... I do not think your lordships ought to advise his Majesty to allow this claim.<sup>1</sup>

It was this position that Nicolas so strenuously assailed. "Deeply impressed with the consequences which must attend the adoption of the idea that baronies were not hereditary before the 5th Ric. II,

<sup>1</sup> *Nicolas, op. cit.* pp. 258, 273, 285-6.

or of the opinion expressed by a member of the Committee that there should be a limitation to the period when titles may be claimed," he set himself, avowedly, to uphold, as against Lord Redesdale, the principle "that a writ of summons to parliament and a sitting in consequence of such writ created a dignity to the party and the heirs of his body, without reference to the period when such writ and sitting occurred."<sup>1</sup> This principle is now accepted, Lord Redesdale's attempt to question it not having met with acceptance.<sup>2</sup> An opinion, indeed, was subsequently obtained from the petitioner's counsel that the "distinction raised by the noble lord as to the period when the writs were issued is not founded on any sound principle, but is at variance with the Precedents on the Journals of the House."<sup>3</sup>

This then was the ground on which the claim failed; *not* the lack of proof of sitting, but Lord Redesdale's doubt whether, at so early a date, a writ, even when followed by a sitting, could operate to create a peerage. Nicolas, indeed, in his book made this absolutely clear, for he admitted that *if* the claim had been rejected for lack of technical proof of sitting, there would have been nothing to complain of (p. xv). The claim, he added, "*might have been* resisted on the ground of a want of proof of sitting;" his complaint was that the House rejected it on another and (as he maintained) a most erroneous ground. When, therefore,

<sup>1</sup> Preface to *Barony of De L'Isle*, pp. xi, xiii. Nicolas italicised the whole of the above statement of principle.

<sup>2</sup> *Peerage Law in England*, p. 41.

<sup>3</sup> *Nicolas, op. cit.* p. xii.

the case is cited as one in which the claim failed from "the absence of evidence of a sitting," it affords but "another instance illustrating" the muddle of the law.<sup>1</sup>

Nevertheless, the author of the printed Case for the petitioners claiming the barony of Meinill (1901) after giving, as above, his novel version of the Frescheville claim, and denouncing Mr. Hargrave for his "utterly wrong and absurd deduction" from the facts of that case, proceeded to explain that

The De Lisle case in 1826 appears to have been the first to really suffer from the curious and mistaken deduction from the Frescheville case which had become accepted as genuine law, and which had obtained added weight from its acceptance in the Third Report on the Dignity of a Peer (vol. II, p. 34).<sup>2</sup>

The principle thus denounced is "the idea..... that twenty writs by themselves do not create a Peerage, but that a definite sitting *must* be proved."<sup>3</sup>

Now, in the first place, the 'De Lisle' claim did not, as it turned out, "suffer" from such deduction; and, in the second, 'the Third Report of the Lords' Committee on the Dignity of a Peer' was actually appealed to, as *in their favour*, on this very point by the petitioner's counsel! They cited the allusion therein to "a succession of writs from which a prior creation, either by patent or by writ, might be inferred" (II, 27), and urged that

<sup>1</sup> See p. 128 above.

<sup>2</sup> *Printed Case*, p. 22.

<sup>3</sup> We even read on another page that "By this writ of 1283 and other subsequent writs Walter de Fauconberg is proved [*sic*] to have been a Peer of the Realm and Lord Fauconberg (No 1)." *Ibid.* p. 4.

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they had "in this case a succession of writs of a double kind..... so that there is a strong inference, arising from the succession of writs, that the party summoned did sit." <sup>1</sup> The Attorney General did his best to explain away the passage, observing that counsel claimed "that the doctrine contended for <sup>2</sup> is supported (*sic*) by the Report. "

In the Wahull case (1892) the actual Resolution recorded only that the claimant had "failed to show that there was created any such barony of De Wahull as he alleges." But the Lord Chancellor's judgment gave as the *rationes decidendi* that—

The summons and the sitting in pursuance of it are essential conditions of the proof.

Now the proof of *both* <sup>3</sup> appears to me entirely to fail here.....

My Lords, as any kind of proof of the facts in this case fails here, I have not deemed it right to make any observations as to how the facts necessary for the claimant to establish may be proved. I desire neither to affirm nor to deny the accuracy of statements made upon very high authority limiting the mode by which proof can be made. <sup>4</sup> In this case it is obviously unnecessary, and I think would be undesirable to deal with any such question. It is enough to say there is here no kind of proof.

Lord Selborne, in his lengthy judgment, entirely concurred with the Lord Chancellor, but seems to have laid more stress on the lack of proof of sitting

<sup>1</sup> *Nicolas, op. cit.* p. 127.

<sup>2</sup> *Ibid.* p. 151. This was also the doctrine contended for in the Meinill claim.

<sup>3</sup> The Italics are mine. The summons itself was challenged as not to a proper Parliament and therefore invalid.

<sup>4</sup> This refers to the kind of evidence ("record of Parliament") necessary for proving a sitting.

than on the doubtful character of the "Parliament" to which the claimant's ancestors were summoned.<sup>1</sup>

One may fitly close this long investigation of "the Lord Abergavenny's case" and of the doctrines built upon it by glancing at its treatment in the strange production from which I have just been quoting. For it was frankly recognised therein that these doctrines were the great obstacle which a claim to the barony of Meinill would have to surmount. For proof of sitting there was none. It was argued, therefore, in the printed Case, at quite extraordinary length (pp. 19-23), that these doctrines had been wrongly deduced from the 1610 decision, which had been misunderstood.

As in the De L'Isle case, a succession of writs could be proved, and the arguments which had then been urged by counsel were once more trotted out. It was once more "submitted that the actual sitting need not be proved by the record, but may be established by presumption;" it was also urged that

There is nothing whatever to lead one to imagine that the first Lord Meinill did *not* sit in Parliament, and one cannot but imagine that the presumption is that he obeyed the command of the Sovereign, and did take his place in Parliament pursuant to the King's writ (p. 20).

This is precisely the petitioner's argument in

<sup>1</sup> It is therefore not quite correct to say, as is said in the printed Case for the claimants of the baronies of Meinill etc., that "both the De Frescheville and the De Wahull cases should be discarded" from the list of those which failed on proof of sitting, "because in neither of them" could valid writs be proved. It is clear that in the Wahull case the lack of proof of sitting was deemed at least equally fatal.

the De L'Isle claim,<sup>1</sup> but in the printed Case I am discussing it enjoyed the advantage (or its reverse) of an incomparable style. Its author, indeed, was so impressed by the brilliance of his own periods that, denouncing "a mere travesty of the law," he adorned the close of his sentence with four notes of exclamation. In the grim pages of the printed Cases presented to the House of Lords such excitement, surely, is unique.

It caused, I remember, some comment that this Case was not signed, in accordance with practice, by counsel,<sup>2</sup> and I heard it suggested that Mr. Asquith,<sup>3</sup> who was leading for the petitioners, may not have cared to associate himself with exuberance so ecstatic. That it made no impression on his unemotional mind is shown by the fact that he ignored the argument so elaborately urged, and did not invite the Committee to say that the sitting of "the first Lord Meinill" should be presumed from his writs. He did but briefly observe that "there is no proof of his sitting..... The Meinill claim..... is a very simple one"..... "it is quite clear that there is no proof of his sitting." <sup>4</sup> On this admission the Committee for Privileges made even shorter work of the claim, and reported (23 July 1903) that "With respect to the Barony of Meinill, it is not proved to the satisfaction of the Committee that any person ever sat in this House under that title."

<sup>1</sup> As I have suggested above, the point was quite arguable, in view of Sir William Jones' attitude as to the *onus probandi* in 1677.

<sup>2</sup> "The case must be signed by two counsel" (Palmer, *Peerage law in England*, p. 232).

<sup>3</sup> Now Prime Minister.

<sup>4</sup> *Minutes of evidence* (1903), pp. 183, 215.

Here at last is a clear instance of a claim explicitly rejected for lack of proof of sitting. And the strenuous efforts in the printed Case to prove that "the presumption of the sitting..... amounts to a mass of evidence impossible to construe in any other manner, or capable of being ignored" were thus curtly disposed of. The author, whose bewildered grammar his excitement may possibly excuse, had distinguished himself also by classing "Lord Abergavenny's case" among "Petitions for Peerages..... rejected by your Lordships' house," and by writing of "the supposed Baronies of Nevill, De Wahull,..... the Barony of Nevill" (pp. 20-21) and so forth. It need hardly be explained that the peerage dignity claimed by the elder and the younger Nevill was the barony, the very real barony, not of "Nevill," but of "Abergavenny."

## (4)

The case of the Barony of Clifton.

Very closely connected with "the Lord Abergavenny's case" is that of the claim to the barony of Clifton of Leighton Bromswold in 1673-4. The opinion of the judges, when consulted by the House of Lords upon the claim, has proved in practice the sheet-anchor of claims to baronies by writ. Recognized as such by every writer, whether he approved its principle or not, it led to the amazing outburst against the House of Lords by the late Professor Freeman—then newly appointed to his Professorship—in 1885. I have dealt fully in another place with this passionate attack,<sup>1</sup>

<sup>1</sup> *Studies in Peerage and Family History*, pp. 5-7.

which was couched in language of vulgar violence, and which would have forfeited the author's right to be deemed a serious historian, had we not to make allowance for the influence of his *bête noire*, that hereditary principle, his aversion to which amounted to an absolute obsession.<sup>1</sup>

Nowhere, perhaps, has a greater importance been attached to this famous case than in the latest work on Peerage law. Sir Francis Palmer there asserts that

The leading case in this subject of barony by writ is the *Clifton Case*, 1673, reported in Collins, Claims, 291.<sup>2</sup> In that case Catherine, Lady O'Brien, claimed the Barony of Clifton, and her petition having been referred to the House of Lords, and by the House to the Committee for Privileges, it was ordered by the House that the judges should give their opinion on this case, which they accordingly did.<sup>3</sup>

"The law," Sir Francis adds, "was finally settled in 1673," by the decision of this case; but "the Redesdale Committee, in their third Report (p. 31) endeavour to minimise the effect of the resolution in the *Clifton Case*, and to negative any general application of the principle on which that case rested." The Committee's criticism was not confined to this passage in the Third Report (1822): there is also an important comment (unindexed) upon the case on pp. 323-4 of the Fourth Report (1825). Both passages should be read in conjunc-

<sup>1</sup> I would note that I publicly exposed his amazing errors at the time (1885), as it has been sometimes attempted to suggest that I did not venture to do so in his lifetime.

<sup>2</sup> This is hardly correct. Collins merely prints the relative extracts from the *Lords' Journals*. (J. H. R.)

<sup>3</sup> *Peerage Law in England*, pp. 38 et seq.



tion with Lord Redesdale's own observations on the case in the proceedings on the De L'Isle claim.<sup>1</sup>

In the meanwhile, Cruise had observed that the creation of a descendible barony by writ and sitting had been "distinctly settled in the case of the barony of Clifton,"<sup>2</sup> which "solemnly established" the principle.<sup>3</sup> Courthope observed, of "the descendible nature of the dignity created," that

it was not till 1673, in the case of the Barony of Clifton, that this principle was solemnly established by decision of the House of Lords (after taking the opinion of the Judges), and it has since been so fully recognised and frequently acted upon, that it may be regarded as part of the Constitution of the Peerage.<sup>4</sup>

Mr. Pike, whose views on these subjects are always independent, considers that the doctrine of "hereditary barony by writ" was "more fully recognised in 1674" by the Clifton Resolution and the Judges' opinion, but he points out that

Even this was rather a decision upon a particular case than the enunciation of a general principle. It appears, however, to have been a sufficient precedent for all subsequent cases in which the circumstances were the same, but to have left open the question of the period at which a summons to Parliament followed by a sitting first operated to create an hereditary barony.<sup>5</sup>

This, indeed, was the ground upon which Lord Redesdale endeavoured, though without success,

<sup>1</sup> *Nicolas, Op. cit.* pp. 101, 273, 281, 285.

<sup>2</sup> *Dignities* (1823), p. 76.

<sup>3</sup> *Ibid.* p. 177.

<sup>4</sup> *Historic Peerage* (1857) p. xxix.

<sup>5</sup> *Const. Hist. of the House of Lords*, p. 131. Compare p. 206 below.

to limit the application of the Clifton precedent and to resist the doctrine that a writ and sitting created an hereditary barony even before the fifth year of Richard II.

As with so many of these questions there seems to have been much confusion on the actual facts involved. There were really at issue two points: (1) the necessity of a sitting under the writ, to render that writ operative as a creation; (2) the descendible nature of the dignity, under a writ containing nothing which imported that effect.

It will be convenient to start from Lord Redesdale's attempts to limit the application of the Clifton case as the governing precedent on the latter point.

In the 'Fourth Report of the Lords' Committee' (p. 323) he went so far as to assert that

The first decision on the subject seems to have been in 1673, on the claim of the dignity of Lord Clifton; and the House, by referring the question to the consideration of the Judges, may be considered as having had doubts what ought then to be deemed the law on the subject, and as having treated the question as a question of difficulty. Before that decision the law cannot be deemed to have been clearly settled; but on what ground the Judges gave their Opinion that the Honour descended from Jervis Clifton to his daughter and heir does not clearly appear; etc., etc.

And in the Third Report (p. 28) we read

This Resolution <sup>1</sup> decided that a writ of summons, and sitting in Parliament, vested in the person, so summoned and seated, a dignity descendible to the heirs of his body,

<sup>1</sup> *i. e.* of the House on the Clifton claim.

though no words in the writ expressed an intent to grant a dignity so descendible.

But on p. 31 this admission is somewhat modified :—

Since that decision, the law has been considered, in different cases which have been before the House, as settled by that decision ; but it may be doubted what was the extent of that decision. It is observable that the Opinion given by the Judges, upon which that decision was founded, is confined, in words, to that particular case; namely the case of Jervis Clifton, summoned to Parliament by writ in the sixth of James the First; and it does not follow that the Judges meant to express an Opinion, or that the House, on the ground of that Opinion, meant to resolve, that, in earlier times, a writ of summons and sitting in Parliament had in law the same effect..... To what extent later decisions may have carried the rule beyond the case of Jervis Clifton may deserve consideration.....

The Committee have not discovered on what grounds the Judges gave their Opinion in the case of the barony of Clifton, or what information the Judges had before them on the subject submitted to their consideration. Perhaps, having found that in the claim of the barony of De Grey, in 1670 (*sic*), three years before the claim of the barony of Clifton, a writ of summons to Parliament and sitting thereupon, had, under the circumstances of that case, been deemed to have given title to an hereditary dignity (which right, however, could scarcely in that case have been deemed to have been lost by Non-user), they may have presumed, from that decision, that the law was to be supposed to be then settled accordingly, though in more ancient times the law might not have been so understood (p. 32);

At this point I break the quotation from this clear and stately prose to point out that its careful

reasoning is marred by a strange error. The barony of De Grey (better known as "Grey de Ruthyn") had been claimed in 1640, not in "1670," and, therefore, not "three" but *thirty*-three years before the Clifton claim. Nor is this a mere slip. The case is dealt with in this Report (pp. 26-7), and its date is there given, three times over, as "1670." So serious an error is rare indeed in these Reports.

Let us resume the quotation.

and that although the time and the manner in which this change in the law had taken place might not be distinctly traced, the fact of a change in the law might be presumed from the modern usage being contrary to the more ancient usage; and as during several years preceding the 6th of James the First, when Jervis Clifton was summoned to Parliament, the descendants of all who had had writs of summons, and had been seated in Parliament according to such writs..... had been ordinarily summoned, and had sate in Parliament, taking precedence according to the first writ; the Judges may have conceived that in the reign of James the First custom had given an operation to such writs which might not have been deemed the effect of similar writs in earlier times. Perhaps the very cautious language in which the Opinion of the Judges in the case of Clifton was delivered, apparently confining that Opinion to the particular case before them, may have been adopted to prevent any inference from their Opinion in favour of any claim under different circumstances, etc., etc.

Lord Redesdale's *dicta* in the course of the proceedings on the De L'Isle claim are wholly to the same effect.

It is very important that your lordships should endeavour to fix in your minds some time when a writ issued to

summon a person to parliament, and a sitting under that writ, should be deemed to create a title to a barony in fee, that is, to a man and the heirs of his body. The first resolution upon the subject was as to a title now enjoyed by a noble lord of your lordships' house—Lord Clifton..... That is the first decision upon the subject, and the first time I can find that any claim of that kind was ever brought forward..... it is manifest from what has passed in preceding reigns that, until that resolution was come to by the House with respect to the barony of Clifton, in consequence of the Opinion given upon that occasion, the general impression must have been otherwise. <sup>1</sup>

Again, as to the doctrine that a writ, "and a sitting in parliament upon that writ, created a right to a descendible peerage," his lordship observed that

The first time that was ever asserted was in the case of the title of Lord Clifton, and certainly the Opinion of the Judges was taken upon that subject, it being then much questioned ;..... The Judges do not appear, from anything which remains, to have given any reasons for the opinion they expressed, at least nothing upon that subject that I can find has ever come down to our time. Whether they did give any reasons, or whether they simply signified that opinion, offering no reasons, it is impossible now to state. <sup>2</sup>

There can, of course, be no question, either from the scientific or from the historical standpoint, that the above admission of "a change in the law"—the application to legal doctrine of the principles of development and evolution—is a great advance on the obstinate and unscientific maxim—one is tempted to say the ludicrous view—that the law

<sup>1</sup> Nicolas, *Op. cit.* pp. 101-2.

<sup>2</sup> *Ibid.* pp. 273-4. Cf. pp. 281, 285

has been "always the same." At the outset of this paper I observed that in the lawyer's realm "change and development are ignored and evolution an accursed thing." Such language, I venture to submit, is not a whit too strong in view of the blighting and sterilising effect on all intelligent research of the lawyer's convenient doctrine that the law was "always the same."

One knows, of course, the subtle plea to which the lawyer has recourse in order to escape the consequences, the obviously absurd consequences, of his own maxim. The law, he pleads, was intrinsically the same, but, "as then understood" (by which word he means misunderstood), it was different. The law, he holds, has never changed from the days of the Middle Ages: it has only been "ascertained" and "defined." This position is well stated in Sir Francis Palmer's work, where the learned author thus deals with the somewhat startling decision of the House on the Earldom of Norfolk claim (1906).

Here it may be well to pause for a moment and point out that where the common law is ascertained, whether by decision or declaration of the House of Lords, the law as so ascertained is taken to have been in force from time immemorial as part of the common law of the land, and is, therefore, applicable to ancient cases as well as to modern cases. Thus in the *Norfolk Case* just referred to, it was held that the law as ascertained by declaration of the Lords in the *Grey de Ruthyn* and *Purbeck* cases was applicable to a transaction which took place in the year 1302, and that the House was bound to apply that law accordingly.

This is based on the principle that in peerage matters

the House of Lords has merely to ascertain the law and apply it. It was contended that it would be hardship to apply the law as ascertained in the year 1906 to a transaction which took place in the year 1302, but, as pointed out by the Lords who took part in the decision, there was no jurisdiction thus to restrict the operation of the common law. <sup>1</sup>

Again, speaking of the rule of law as to proof of creation and tracing descent from the grantee:—

No doubt it is not possible to show that this has always been the law since the time of Henry III, but inasmuch as it has been recognized as the common law in modern times it may be assumed in accordance with the principles recognized in the *Norfolk Peerage Case* (1907) that the same rule has always prevailed. <sup>2</sup>

Let us apply this principle to the case of peerage dignities enjoyed *jure uxoris* or by the curtesy of England. The same learned writer has devoted a chapter to these dignities, and I have also discussed the subject myself in another portion of this work. <sup>3</sup> Sir Francis admits that “the husband of a peeress in her own right seems in former times to have been considered entitled, at any rate after issue had, to be summoned to Parliament in respect of his wife’s dignity” (p. 133). He cites cases “in which the curtesy principle was recognized;” but he strangely ignores the Fauconberg case (1903) in which it was actually decided by their Lordships, after much argument on the subject, that the barony, in the time of Henry VI, was “vested in William Nevill in right of his wife Joan,” a

<sup>1</sup> *Peerage Law in England*, p. 22.

<sup>2</sup> *Ibid.* p. 98.

<sup>3</sup> See p. 2 *et seq.* above.

proposition opposed by the Attorney General, Sir Robert Finlay,<sup>1</sup> who had afterwards, in the Norfolk case (1906) to argue on the other side. From the latter case Sir Francis Palmer aptly quotes the following dialogue (pp. 134-5) :

*Lord Davey.* That was very common in ancient times—that the husband of a female heir sat in this House in right of his wife.....

And the issue of a writ to the husband of a female heir did not create a new peerage, but gave him the enjoyment of his wife's peerage. I think probably that is the solution of it.

*Lord Halsbury.* I think that is what seems to be the law.<sup>2</sup>

*Is it the law now?* And if not, why not, when, as Lord Halsbury and Lord Davey, in their Judgments on this very claim (1906), so strenuously insisted, "the law is always the same"? When their Lordships in 1903 decided that William Nevill enjoyed a barony "in right of his wife," they cannot have done what they declared, in 1906, it was not in their power to do, namely have recognized a law different from that which is now in force. Consequently it is the law now

<sup>1</sup> See below.

<sup>2</sup> This dialogue will be found on p. 97 of *Speeches delivered etc.* (1906). On p. 145 Lord Davey enquires: "At what period did the practice of men who married heiresses to Earldoms sitting *jure uxoris* cease?" And Lord Robert Cecil replies: "There is, no doubt, a good number of instances, particularly of Baronies, of men who married heiresses sitting." On pp. 146-151 Sir Robert Finlay discusses the point and observes: "I can show your Lordships..... that when a man had issue by his wife, being a Peeress in her own right, it was usual to summon him *jure uxoris* to Parliament, and he sat there *jure uxoris*" (p. 147). He further cites the Wimbish case as "really a decision by the King with that advice that, when there is issue of the marriage, the husband should have the style of the dignity. It is an illustration of the general rule..... the general rule, which is illustrated by the decision of the King, was that he got the dignity if there was issue of the marriage..... I submit to your Lordships that that is a very good illustration of the rule which at that time existed" (p. 149).



that the husband of a peeress in her own right can sit in the House "in right of his wife."

This is a startling proposition and will, no doubt, be denied. But the House has "ascertained" the law in its Resolution on the Fauconberg case,<sup>1</sup> and the law so ascertained is applicable to modern as well as to ancient cases. I must press the question home. Are there, could there be now such things as peerage dignities enjoyed *jure uxoris*? And if not, why not? Sir Francis attempts an answer: as there have not been any claims to such dignities since the reign of Elizabeth (or at least of James I), "it may be taken, therefore, that, whatever was the older practice, it has now become obsolete."<sup>2</sup> Obsolete? But this, surely, is the language of Roman, not of English law. In the Scottish courts the plea might serve; but not with us.<sup>3</sup> "Desuetude," observed Mr. Fleming, in his argument on the Berkeley claim (VIII H.L.C. 56), "cannot determine a right. The law as to wager of battle is an instance of that."

In his Judgment on the Earldom of Norfolk claim the ex-Lord Chancellor (Lord Halsbury) was on this point emphatic.

No stronger illustration of this principle can be given than when, so lately as 1818, the Court of Queen's Bench, with Lord Ellenborough presiding, felt itself compelled to allow a claim to wager of battle in an appeal of murder, and but for the intervention of an Act of Parliament, 59 Geo. III, cap. 46, some of His Majesty's

<sup>1</sup> Namely that a husband can sit "in right of his wife."

<sup>2</sup> *Op. cit.* p. 136.

<sup>3</sup> Coke, the authority upheld by Sir Francis, says "The common law hath no controller in any part of it but the High Court of Parliament; and if it be not abrogated or altered by Parliament it remains still." (1 Inst. 115 b.)

judges might have had to preside over a single combat between the Appellant and his antagonist.<sup>1</sup>

Here also the privilege of appeal had not been claimed since the days of Elizabeth (1571), and even then the 'battle' had not taken place. Indeed, "before the accession of Edward I (1272) the judicial combat was already confined to that sphere over which its ghost reigned until the year 1819."<sup>2</sup> And yet Lord Ellenborough laid it down that

The general law of the land is in favour of the wager of battle, and it is our duty to pronounce the law as it is and not as we wish it to be; whatever prejudices, therefore, may justly exist against this mode of trial, still as it is the law of the land, the court must pronounce judgment for it.

Obsolescence availed nothing.

But where Lord Halsbury's illustration fails is that it only vindicates the application to a modern case of a known law or practice of the Middle Ages, unless legally altered; it does not vindicate the converse process of applying to a medieval case the law as it existed, or was declared to exist, in the 17th century. And it was by this converse process that the Earldom of Norfolk claim was disposed of. Let me take an illustration from the realm of dress. In the garb of judges, of 'bluecoat

<sup>1</sup> *Speeches*, etc., p. 191. This statement, of course, is wildly incorrect. The Court of *King's Bench* gave its decision 16 April, 1818, and the single combat was averted, not by an Act of Parliament, but by the Appellant crying *craven* and declining fight, the prisoner being consequently discharged (April 1818). It was not till the following year (June 1819) that the Act was passed, receiving the Royal assent 22 June. I merely mention this as a further illustration of the supreme indifference to facts and dates of really great lawyers.

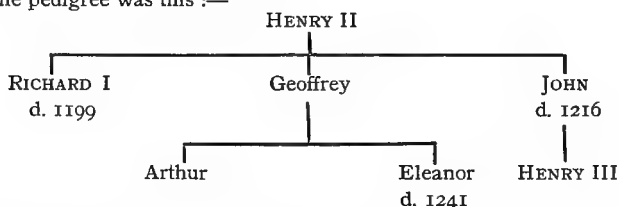
<sup>2</sup> *History of English Law*, II, 630.

boys, ' and of bishops, of municipal dignitaries and of yeomen of the guard, we have, no doubt, survivals, more or less ancient, of the same dress that they wore in days more or less remote. While dress, like other human institutions, had its development and its changes, these changes were, in such instances, artificially arrested. We are justified, therefore, in saying that, until such garb is altered, it remains the same as in former days. But does it follow from this admission that we can argue back from the present to the past, and "ascertain" the dress of the 14th century by determining the rules which govern that of our own day? To revert to the case I have already cited, the Dutch painters, at least, of the 17th century, held the lawyers' doctrine and applied it with a will. By them the dress of their own time was "taken to have been in force from time immemorial." They applied it to characters in the Old Testament, and it saved them from long and arduous archæological research. In that respect they found it no less useful than the lawyers.

Should this illustration be rejected, we will come to closer quarters. What of the *casus regis* and its influence on the rules of descent? Who, at the death of William IV, was heir to the throne of the United Kingdom? Queen Victoria, of course, comes the prompt reply. But who then, at the death of Richard I, was heir to the throne of this country? If "the law was always the same," his nephew Arthur was the heir; and after Arthur Eleanor, Eleanor who survived Richard for more than forty years. Yet the throne

went to John, and to Henry his son after him.<sup>1</sup> Why? Because the law at that time was notoriously *not* the same. It was still an open question whether the surviving brother had not a better claim than the child of the intervening brother. Indeed, we find a statement placed in the mouth of the great Marshal, at the death of Richard I, that, as the law stood, John was his rightful heir.<sup>2</sup> So late as 1246 juries were still unable to state who the rightful heir, in such a case, was.<sup>3</sup> Even later, Edward I could claim that "Richard my ancestor was seised thereof in his demesne as of fee, and from the said Richard, because he died without an heir of his body, the right descended to a certain King John as his brother and heir, and from him to King Henry as his son and heir."<sup>4</sup> To the glib retort that, in the days of John or even of Henry III, "the law was the same," but was not "understood," because it had not then been "ascertained" or "defined," I

<sup>1</sup> The pedigree was this :—



As in the case of the Duke of Kent, Geoffrey, the intervening brother, had died in his elder brother's lifetime. Henry III was in the same position to Eleanor as the late King of Hanover to Queen Victoria.

<sup>2</sup> "Mais voyez le comte Jean. En conscience c'est le plus prochain hoir de la terre de son père et de son frère..... le fils est plus près de la terre de son père que le neveu" (*Histoire de Guillaume le Maréchal* ll. 11892-6, 11900-11902, rendered into modern French by M. Paul Meyer). Compare the *Très ancien coutumier* (Ed. Tardif), p. 13.

<sup>3</sup> "who is the next heir it is not for the Jury to judge"..... "the jury know not who is the next heir." *Calendar of Inquisitions* : Henry III, I, 14.

<sup>4</sup> *History of English Law*, I. 498.

would reply by asking :—where *was* the law ? If it was then the same, although no one knew it, it must have existed somewhere. That existence was not in the law-books, not in the minds of men, not, so far as we can find, anywhere on this planet : presumably, therefore, it was somewhere in space. And that, no doubt, is the true answer ; for it has been projected thither by the searchlights of a later age.

Let us take, still from the law of descent, further illustrations of the fact. In the Lord Great Chamberlain case the law of *esnevia* was adduced on Lord Ancaster's behalf ; but it was not grasped that the law had not always been the same. " For the law about this matter underwent an instructive change..... the law is beginning to fluctuate."<sup>1</sup> Or take the even clearer case of the disappearance of restriction on alienation without the heir's consent. Of this " important episode " we read that " the change, if we consider its great importance, seems to have been effected rapidly, even suddenly ; " it was " a great and sudden change. " Was this " great change " effected by a legislative measure ? By no means. " It must have been effected by some machinery of legal reasoning..... above our law at the critical moment stood a high-handed court of professional justices..... who could abolish a whole chapter of ancient jurisprudence by two or three bold decisions."<sup>2</sup> It is thus that our law developed and was changed,—by the " bold decisions " of a judge, or by the speculative blunders of a Coke.

<sup>1</sup> *Ibid.* II, 274-5.

<sup>2</sup> *Ibid.* II, 310-311.

Lastly we come to "that extraordinary rule," as Maine termed it, "of English law," the exclusion of the half-blood.<sup>1</sup> The growth of this famous doctrine has been traced by modern research, and that growth is fatal to the fiction that the law is "always the same."

If we turn to the records of the time, we shall see much uncertainty; we shall see claims brought into court which the common law of a later day would not have tolerated for an instant, and juries declining to solve the simplest problems..... In Edward I's reign the law seems to be setting its face against the claims of the half-blood; but even in Edward II's there is a great deal more doubt and disputation than we might have expected..... the lawyers are beginning to make everything turn on seisin, but they have not yet fully established the dogma that if once that eldest son is seised his half-brother will be incapable of inheriting from him.

Our persuasion is that the absolute exclusion of the half-blood, to which our law was in course of time committed, is neither a very ancient nor a very deep-seated phenomenon.<sup>2</sup>

In a word, it "is modern:"<sup>3</sup> clearly "the law of Bracton's day had not yet taken this puzzling shape."<sup>3</sup> We are dealing, observe, with a change, the development of a new doctrine, not the mere "ascertaining" of law misunderstood till then. The authors of the *History of English Law* were lawyers and Professors of law, but they scorned the device of subterfuge. Approaching their problems in the spirit of historians and of men of science, they could write of "a complicated

<sup>1</sup> Down to 1834.

<sup>2</sup> *Op. cit.* II, 301-3.

<sup>3</sup> *Ibid.*

set of interdependent changes..... which gradually established a definite law :” they could, without hesitation, speak of its “ evolution.”<sup>1</sup>

For to them the law had a higher task than to “ circumvent by tortuous paths the obstacles that it cannot surmount.”<sup>2</sup> Convenient though the fiction may be that the law has never changed, one cannot, for the sake of convenience, dissociate law from fact. Even facts have their claims. If I have thus denounced the doctrine that the law “ is always the same,” it is because that doctrine does violence to history, because it is historically false.<sup>3</sup>

Now this discussion has arisen out of Lord Redesdale’s doubts whether the Opinion of the Judges on the case of the Barony of Clifton should have been applied retrospectively to the earliest days of Parliament. As it is now settled law that it ought to be so applied, any further discussion may appear academic, and therefore to be scorned by the “ practical ” lawyer ; for the Lords “ have held that the *Clifton Case* established a general common law rule operating retrospectively to the time and in the reign of Edward I.”<sup>4</sup>

The student, however, will discover that there are several points of interest which still require investigation, and that such investigation may reveal misunderstanding and confusion. What

<sup>1</sup> *Ibid.* p. 323.

<sup>2</sup> *Ibid.* I, 204.

<sup>3</sup> See below for the full acceptance of the opposite doctrine by Lord St. Leonards in the Berkeley case.

<sup>4</sup> *Peerage Law in England*, p. 41.

was the real point at issue in the Barony of Clifton case? Whence did the Judges get the law embodied in their Opinion? Does the Resolution of the House justify the use that has been made of it? And if so, what is the limit of its retrospective action? What, in other words, was the earliest true Parliament?<sup>1</sup>

It is hardly possible to deal fully with all or any of these questions, but some answer may be attempted. In the first place, although every one is agreed as to the point at issue in the case, it seems to be at least possible that every one is mistaken. Is the heir-general of a person summoned by writ, and sitting in virtue of that writ, entitled to a barony in fee<sup>2</sup> by hereditary right? Such, it is agreed, was the point raised. But why should such a point be raised under Charles II (1673-4)? Lord Redesdale, it is true, described it as the first claim of the kind, and the decision as the first to be given.<sup>3</sup> And he consequently sought to discover the grounds on which it had been based. But in such a claim, on the contrary, there was no new feature; in several then recent precedents no question had been raised as to such hereditary right. Including cases of abeyance, as being even stronger examples of an hereditary right in the blood, we have Ogle (?) 1628,<sup>4</sup> Grey de Ruthyn 1641, Windsor 1660, Sandys 1660,

<sup>1</sup> Compare p. 203 above.

<sup>2</sup> This phrase, of course, is not technically correct; but it is accepted by usage.

<sup>3</sup> See p. 207 above.

<sup>4</sup> Queried only from the possible doubt as to whether the recognition implied *gratia regis* (there had been abeyance in the case).



Roos 1667, and Fitzwalter 1670.<sup>1</sup> In all these cases a barony in fee had been allowed to the heir-general or to a co-heir (Windsor) without question. The list, I think, is more complete than any yet compiled, and I attach special importance to Sandys, both because it seems to have been overlooked and because it was duly referred to the House and came before the Committee for Privileges.<sup>2</sup> Grey de Ruthyn is a known precedent,<sup>3</sup> but it is well to add that the point was fully argued in that case, for Selden urged against the petitioner that a woman could neither inherit a barony by writ nor transmit to her heirs a right to it.

In what then did the Clifton case differ from those which had preceded it? Tho petitioner's great-grandfather, Sir Gervase Clifton, had been summoned and sat, and had died in 1618.<sup>4</sup> In the Sandys case the petitioner's (maternal) grandfather had been summoned and sat, and had died in 1623. But when we scan the Judges' Opinion on the Clifton claim, we note that they mention the fact, to us wholly irrelevant, that the husband

<sup>1</sup> I do not include Norreys, because although Lord Norreys took his seat without opposition, it was not till 1679. But it was alleged in the Howard de Walden case (1691) that he "was declared Lord Norris by King Charles II in 1669" and Dugdale's *Baronage* (II, 410, 489) published in 1676, speaks of him as "now Lord Norris, by descent from his grandmother," whose father had died in 1623.

<sup>2</sup> Report from Committee 4 May 1660 (*Lords' Journals*).

<sup>3</sup> See p. 143 above.

<sup>4</sup> Courthope (p. xxx) says that, though some held that there must be two writs and two sittings, "this is a mistake, for in the case of the Barony of Clifton there was but one writ, and a sitting under it, which was held sufficient to create a barony." This is repeated from Cruise (p. 79), who relies on "Collins." But there the statement is traced to its source in a letter of Feb. 25, 1694/5 from the Earl of Huntingdon, in which the statement is made (p. 330). The facts are that Lord Clifton had been (naturally) also summoned to the "Addled Parliament" of 1614 (Dugdale's *Summonses*).

of the first peer's heiress "was by letters patent created baron Leighton of Leighton Bromswold," etc., etc. They also take "the case in fact to be as His Majesty's Attorney General reported it to be." What then was the tenor of that report? Here we come to the new matter. The Attorney General (Heneage Finch) had placed in the very forefront of his report (29 Oct. 1673) this apparently irrelevant fact, and, further on, had stated his opinion

That when the Duke of Lennox, her husband, did, in 17 *Jacobi*, accept a patent of the Barony of Leighton Bromswold in tail to him and the heirs male of his body, this could neither alter the nature nor the course of descent of his wife's inheritance, but that remained as it was before.

Why? Because the writ and sitting had created for Sir Gervase a barony which was an inheritance in fee, "which ought to descend to his lineal heirs." <sup>1</sup>

Such then was the strange difficulty which presented itself to the minds of the lawyers of the time. The petitioner, according to the Lords' Journals, claimed her great-grandfather's "barony of Leighton Bromswold." Had his son-in-law's acceptance (within a year of his father-in-law's death) of "the barony of Leighton Bromswold" in tail male affected the validity of her claim? Strange though it may seem to us that such a point should even be raised, it was raised again in the case of the barony of Willoughby de Broke, full twenty years later. The petitioner then

<sup>1</sup> 9th Report Hist. MSS. II, 37.

admitted that his ancestor Sir Fulk Greville, through whom, as *de jure* Lord (Willoughby de) Broke, he claimed, had not asserted his right to the old barony by writ, but had accepted a new barony—"Brooke of Beauchamps Court"—by patent in tail male, 1621. But this, he urged, could not affect his hereditary right to the other. Lord Brooke's counsel, however, disputed this, and the objection was also raised on behalf of the Crown. Eventually it was urged for the Crown "that the heir male has a grant of the barony of Broke,<sup>1</sup> which was Sir Robert Willoughby's title; that two persons cannot have it;..... that there is a lord Broke in the House already, there cannot be two, so that if the title be allowed to the heir general, then the patent to the heir-male is void, etc."<sup>2</sup> The Attorney General argued that "His accepting a Patent for Brooke of Beauchamp Court should be a kind of extinguishment of the other Barony"!<sup>3</sup>

It will, I think, hardly be questioned, when all this has been considered, that the only point of possible doubt in the barony of Clifton case was the effect of the creation of a barony of Leighton Bromswold, by patent, in 1619.

The Committee for Privileges actually insisted on the patent being produced and read.

The Lady Obryan is called in again. She is told that

<sup>1</sup> i.e. the dignity created in 1621.

<sup>2</sup> See "Collins" 321-5 for all this. The petitioner of 1673 had escaped this aspect of the difficulty, for, as was duly insisted on, the "barony of Leighton Bromswold" created in 1619 had become extinct in 1672.

<sup>3</sup> *House of Lords' MSS. : New Series*, Vol. I. This report of the proceedings is of considerable importance as confirming and amplifying the account in "Collins."

the Lords desire to see the Patent or (if she have it not) an authentique copy of it at their next meeting.

The Councill produce a copy of the Patent which is read.<sup>1</sup>

The meagre reports of the proceedings leave in some obscurity the point eventually in question, but the Solicitor General, at least, appears to have acknowledged the claimant's right.

The Attorney Generall opens the auncient custome of calling by Writt and hopes the House will proceed in favor to his majesty.

The Sollicitor acknowledges his judgment to be that a summons creates a fee if there be no speciall words of limitation in it.

The Lady Obrians Counsell argue on the nature of writts and leave their Case to the Lords' judgment...

The Judges are asked whether a Writt of Summons and Sitting upon it make a fee.

The L. Ch. Justice C. Pleas desires they may not give a sudden answer but may have a convenient time to answer.<sup>2</sup>

The Judges then unanimously disposed of this question by their Opinion :

First, that the said Jervas, by virtue of the said writ of summons, and his sitting in Parliament accordingly, was a peer and baron of this kingdom, and his blood thereby ennobled.

Secondly, that his said honour descended from him to Catherine, his sole daughter and heir, and successively after several descents to the petitioner as lineal heir to the said Lord Clifton.

Thirdly, that therefore the petitioner is well entitled to the said dignity.

<sup>1</sup> Priv. Book, 12 Jan. 1673/4. I am indebted to the authorities of the House of Lords Library for allowing me to consult this volume.

<sup>2</sup> MS. Min. 20 Jan. 1673-4. (See the preceding note).

A dignity so created and descending could not be affected in any way by the patent creating the barony of Leighton Bromswold.

The suggestion I have here made as to what was the true reason for taking the opinion of the judges is confirmed, I think, by the case of another barony in fee only four years before. When Benjamin Mildmay had claimed, as heir general, the barony of Fitzwalter, in 1668, no question was raised as to the right, in ordinary circumstances, of an heir-general to a barony in fee : but the two points on which the House resolved to hear counsel were " Whether a barony in fee shall descend to the half blood ? And whether a barony in fee may be merged in an earldom in tail ? " <sup>1</sup> When the case, owing to the prorogation of Parliament, came before the King in Council, the same two points were again argued by counsel and finally referred to the judges who unanimously agreed " that if a baron in fee simple be made an earl, the barony will descend to the heir general, whether the earldom continue or be extinct. " <sup>2</sup> It was not a question of whether a barony in fee should descend, in normal circumstances, to the heir-general, but whether that normal rule of descent would be affected by a patent conferring on its holder an earldom in tail male. As in the Clifton and Willoughby cases, it seems strange now to us that such a point should be even raised.

This brings us to the second question : whence

<sup>1</sup> *Lords' Journals*, 21 April 1668. It appears that the Attorney General (Montague) had raised the strange objection that if such a barony was not attracted, but emerged, it would tend to multiply peers.

<sup>2</sup> Order in Council 19 January, 1669/70.

did the Judges get their law? <sup>1</sup> Lord Redesdale sought for the answer, and professed that he had sought in vain. And yet surely that answer is simple: they got it straight from Coke. The famous passage in his First Institute contains these words:—

Creation by writ is the ancienter way..... and this writ hath no operation until he sit in Parliament, *and thereby his blood is ennobled to him and his heirs lineal*, and thereupon a baron is called a peer of Parliament. (16 b)

It is one of the curiosities of literature, or at least of legal literature, that Nicolas, who constituted himself the champion of this doctrine, ignored this, the one passage in which it originally appears, and devoted himself, in his monograph, to vindicating the accuracy of “the Lord Abergavenny’s case” in Coke’s 12th Report. For in that report, which he there printed, the *hereditary* effect of the writ and sitting (the point for which he was contending) and the famous doctrine of the ennobling of the blood—which so enraged Mr. Freeman—are actually not to be found! The italicised clause is an interpolation, by Coke, in his First Institute. <sup>2</sup>

This was rightly and acutely urged in the (Willoughby de) Broke case (1694-5) by the then Attorney General.

[ord] Coke says this, but he cites no law-book for this.

The writ has no words of an inheritance in it..... My Lord Coke 1st Inst. says ‘A Barony by Writ and

<sup>1</sup> See pp. 205, 207 above.

<sup>2</sup> This may have largely escaped notice. Cruise (p. 76) appears to have overlooked it.

sitting in Parliament creates an inheritance.' Lord Coke is the only author in law that says so. He cites no authority for this.<sup>1</sup>

In styling the italicised clause an "interpolation" by Coke, I do so in no offensive sense, but only as emphasising the fact that nothing of the kind is found even in his own report of "the Lord Abergavenny's case." Nor do I suggest that this doctrine was a mere invention of Coke's: on the contrary, I hold that he was simply stating the law as it then existed and as it had existed for some time—certainly from the days of Henry VIII.

Here again the whole question is that of its retrospective application. Does it follow that because the doctrine he thus asserts was law in his own day, it was also law in the days of Edward I? It was the latter proposition which Lord Redesdale assailed; and in that assault he was justified by precedents of weight. In the (Willoughby de) Broke case the Attorney General cited Prynne, Doddridge, Elsing, and Selden as against the solitary *dictum* of Coke,<sup>2</sup> and urged that

There were many persons summoned as the father, but none of the descendants. This is a personal summoning of one person to one Parliament, and mentions nothing of continuance.<sup>3</sup>

It is important, however, to observe that in the Willoughby case the real question was not raised, for writs had been issued down to and in 1515.

<sup>1</sup> Proceedings of 11 Dec. 1694 and 16 March 1694/5 in *House of Lords' MSS.: New Series*, vol. i. Cf. 'Collins,' pp. 322-3.

<sup>2</sup> See, for an epitome of their arguments, "Cruise" (1823), pp. 73-4.

<sup>3</sup> *House of Lords' MSS.: New Series*, I, 403.

If there had been no writs since the days of Edward I, the result might have been different.<sup>1</sup>

Hallam, who was influenced by the arguments of Selden and his fellows, puts the case very reasonably when he writes :

The course of proceeding, therefore, previous to the accession of Henry VII by no means warrants the doctrine which was held in the latter end of Elizabeth's reign, and has since been too fully established by repeated precedents to be shaken by any reasoning.<sup>2</sup>

It is probable that any historian who fairly examined the evidence would arrive at the same conclusion ; and, writing from the historian's standpoint, although himself a lawyer, Mr. Pike emphatically does so.

It has already been shown that in the reign of Edward I. and for some time afterwards, the number of persons summoned among the Barons varied very widely. This fact in itself is almost sufficient to prove that the idea of the creation of an hereditary barony could not have been in the mind of the sovereign at the time at which the summons issued. We find that men were summoned to one Parliament and not to another ; we find that their heirs were sometimes summoned and sometimes not. All this is quite inconsistent with the theory that a single summons to Parliament, followed by a sitting in Parliament, gave a peerage to the person summoned and the heirs of his body.<sup>3</sup>

Gneist, who devoted special attention to " the

<sup>1</sup> On the other hand, the Attorney had a strong point in the discontinuance of the writs, none having been issued since 1515 to those entitled to them by the law now accepted.

<sup>2</sup> *Middle Ages* (1860), III, 125.

<sup>3</sup> *Const. Hist. House of Lords* (1894), p. 108.



development of the heritability of the temporal peerage, ”<sup>1</sup> held that

The summons by writ could not, being a single act of invitation, express or found a permanent right..... This title by custom (to a writ) was in the fifteenth century hereditary for the older and more eminent, but not for others. Mere personal summonses became rare even under the house of Lancaster ; under the Tudors they entirely ceased ; and under Elizabeth the courts interpreted a summons by writ to be hereditary ‘by virtue of custom.’

..... the ‘summons’ by writ to each separate session had not in itself the character of a ‘dignity’ conferred. The arbitrary modern expression, which speaks of a creation of peers by writ, is only a source of confusion and dispute.

Enough has now been said to show that we have here to deal with two distinct developments, each gradual, and each, as such, a thing abhorrent to the law. The first is the slow and gradual growth of the hereditary right out of custom ; the second is the gradual development, since the days of Coke, of the doctrine that a writ and sitting created an hereditary barony. A gradual development, I say, because at first it was applied only to baronies which had not long been dormant or in abeyance and for which, therefore, there could be produced comparatively recent writs. Lord Frescheville did, no doubt, endeavour in 1677 to claim that he was justified by the Clifton case in asserting that a solitary writ in 1297 had created an hereditary barony, but, as we have seen, he failed. It was not till a century later (1764) that the Barony of Botetourt,

<sup>1</sup> *Const. Hist.* (1886), pp. 430 *et seq.*

which had not been heard of for nearly four hundred years, was suddenly disinterred and called out of abeyance for one of its co-heirs.<sup>1</sup> This precedent led to a number of similar claims, which are grouped together and satirised in *The Complete Peerage* (I, 288-9). But, in spite of the Lords' Reports and of Lord Redesdale's pleading, it is difficult to see how the House could have avoided the extreme application of the doctrine, when its principle had once been adopted. Of development, of change, of evolution, the law knows nothing.

This is a point that one cannot leave without reverting to that striking Judgment on the Earldom of Norfolk case (1906) which was based avowedly on the maxim that "the law was always the same." For this Judgment is generally considered to have been delivered under the influence of the late Lord Davey, whose insistence, indeed, upon that maxim was, we shall see, unflinching. Circumstances, however, alter cases, and, when we turn from the Norfolk claim to that for the Barony of Wahull, from Lord Davey, sitting as judge, to Sir Horace Davey, arguing as counsel, we are surprised to find that able lawyer arguing that in fact, as apart from theory, the law, even so late as the days of James I, was not the same as now. He went, in fact, much further than Lord Redesdale in his heresy.

The point arose in this way. Counsel had a very weak case and was obliged to rely largely on

<sup>1</sup> See Appendix on "Case of the Barony of Botetourt" in Nicolas' *Barony of L'Isle*, pp. 309-317. According to Cruise, the petitioner's Printed Case claimed it as "a certain rule in law that the sitting in parliament, by virtue of a writ of summons,..... gave a barony in fee."

a report by the Commissioners for Earl Marshal in the days of James I, of which there are varying versions, and the authority of which rests upon the facts that "it is obviously very old, and the spelling is the spelling of a byegone time."<sup>1</sup> In this document, *quantum valeat*, the Commissioners are made to speak of the Claimant's "Right soe fully appearing (which cannot dye)," but somewhat inconsequently express their opinion that he deserves to be "regarded in grace" and that they "think him worthy of the Honnour of a Barron." It was at once pointed out by one of the Committee that

It contains apparently no finding of the Claimant's right..... If these words had been intended to bear the meaning you attribute to them, I should have expected the Commissioners to report that he was entitled to the Peerage.

Counsel was thus forced to adopt, unconsciously no doubt, the position that Selden had taken up, in the Grey de Ruthyn case, two and a half centuries earlier. Selden denied that a barony in fee descended to an heir general *as of right*—

but I confess, where a sole barony..... hath been in a man who left a sole daughter and heir, it hath many times so fallen out that the King hath conferred the honour upon the issue of that daughter ; but that is *ex gratia regis*, not *ex vigore legis* ; and it is rather a restitution or revival of an ancient honour than right of descent.<sup>2</sup>

Sir Horace had similarly to plead that, in the days of James I, right of descent was not sufficient;

<sup>1</sup> *De Wadhull Peerage : speech of counsel* (1892), p. 7.

<sup>2</sup> 'Collins,' p. 204.

the heir general could succeed only *ex gratia regis*. This would explain, he urged, the wording of the Report.

*Sir Horace Davey* : 'They regard it as a *right* ; but it may be that at that time of day, in the reign of James I., the question whether a person should be summoned or not was treated as a matter within the King's discretion, as part of his prerogative, and that the right to be summoned, where a Barony by Writ had been established, was not so fully settled as a matter of absolute right as it is at the present day.'

*Earl of Selborne* : 'Was it not as much a matter of absolute right in James I's reign as at present ?'

*Sir Horace Davey* : 'I believe not.'

*Earl of Selborne* : 'That is a new proposition to me... I do not think Lord Coke's language upon the subject indicates any doubt with regard to the right to a Peerage. .... The decisions in recent times we must suppose to have been expository of the law : *the law could not have been invented.*'

*Sir Horace Davey* : 'No doubt that is so. *The law is, in theory, always the same,* but there have been periods when the law has not been so clearly ascertained and defined as it has been in recent times. *When it is ascertained and defined, it has always been the law,* but there have been times when it has not been defined in the way in which subsequent tribunals have defined it.<sup>1</sup>

Here I pause to observe that, as was explained above, no one suggests that the law on this point was "invented" by Coke. He stated, correctly no doubt, the law as it existed in his own time. But there had been two developments since earlier times, first, the development of the hereditary principle in baronies by writ themselves ; second, the consequent development in peerage law ; for

<sup>1</sup> *De Wadhull Peerage : speech of counsel*, p. 8. The italics are mine.

peerage law, as such, is, of course, largely based on actual custom and usage in the matter of peerage dignities. As that usage developed, and as that custom changed, so had the law relating to them to follow suit. Even in the Earldom of Norfolk case one caught stray glimpses of a fact that cannot be suppressed. From the 'Third Report on the Dignity of a Peer' Sir Robert Finlay cited the words :

The Committee conceive that they have fully shown that Resolutions and Decisions of the House which may now be considered as settled law regulating the House in deciding on rights of Peerage would, if applied to what has passed in former times, tend to produce great confusion (p. 244).

The following dialogue also is instructive.

*Lord Davey* : 'Can it be considered to be clearly established in the reign of Henry the Sixth that you must trace the devolution of a Peerage, not from a person last seized,<sup>1</sup> but from the original grantee ?'

*Sir Robert Finlay* : "I should not like to say that it is. Your Lordships see that Lord Coke lays it down as quoted by Mr. Cruise in the passage I referred to. It is very difficult to say at what period in our legal history particular doctrines, however formally established they are, were generally recognised as law.'

*Lord Davey* : 'That is where the difficulty is in administering this branch of the law.'<sup>1</sup>

The principle for which Sir Robert was contending is, I may add, affirmed at the outset of 'Division I' of the same Report. It is there observed that the Journals record

some Resolutions of the House in direct contradiction

<sup>1</sup> *Speeches of Counsel*, p. 63.

to what had been practised, and submitted to as lawful, in earlier times ; and therefore, if the House was fully informed, was fully aware of all which had been before done, these Resolutions must have probably been founded on a supposition that the Dignity of Peer of the Realm had then assumed a character different from the character which had belonged to the Earls and Barons of earlier times.

The Grey de Ruthyn Resolutions are then quoted with the comment that they may be deemed to have been in contradiction to ancient practice.<sup>1</sup> And it is elsewhere added that

These surrenders of Honours are in direct contradiction of the Resolutions in the case of Viscount Purbeck, but they were certainly anciently frequent.<sup>2</sup>

I do not myself admit that these surrenders are "in direct contradiction of the Resolutions in the case of Viscount Purbeck," though that is the statement usually but very loosely made. Those Resolutions (or rather that Resolution) were rigidly limited to the case of a surrender *by fine*, a practice which had been introduced in the Stafford case, on legal advice, by the Crown, and which was again resorted to, on legal advice, in that of the Viscountcy of Purbeck. The Resolution solemnly affirmed, upon "a question in law..... whether *a fine levied to the King* by a peer of the realm of his title of honour can bar and extinguish that title," that "no *fine* now levied, or at any time hereafter to be levied to the King can bar such title of honour, or the right of any person claiming under him that levied or shall levy such fine."<sup>3</sup>

<sup>1</sup> *Third Report*, p. 25.

<sup>2</sup> *Ibid.* p. 218.

<sup>3</sup> *Lords' Journals*, XIII, 253 ; *Shower*, parl. ca. 1.

Cruise, with careful accuracy, restricts the Resolution to the "surrender of a dignity by fine,"<sup>1</sup> but the Lords' Reports<sup>2</sup> wrongly assert that it rejects "surrender *by any act of the person*" &c. &c. Sir Francis Palmer similarly treats it as a "full recognition" of the conclusions in the Grey de Ruthyn Resolution,<sup>3</sup> though these were far more general in their terms, and Lord Ashbourne, in his judgment on the Earldom of Norfolk case, dealing with the validity of the surrender in 1302, observed that "In 1678 the net question presented itself for decision in the Purbeck Case, and the resolution of the House, was distinct and unqualified." In this Lord Davey concurred;<sup>4</sup> but the 1302 surrender was not effected *by fine*.

We now come to the passage in which, as if horror-stricken, Lord Davey rebuked Sir Robert for questioning the sacred doctrine and for daring to speak of it as a "theory"—the very term which, as Sir Horace Davey, he had himself applied to it.<sup>5</sup>

*Lord Davey*: 'We have to look at the resolution in the Grey de Ruthyn case' (1641).

.....

*Sir Robert Finlay*: 'Yes, but what I am submitting to your Lordships is..... that the reasoning in this case is with reference to the Parliamentary dignity of the office.... What I suggest for your Lordships' consideration is that such views have very little bearing upon a surrender

<sup>1</sup> *Dignities*, p. 113.

<sup>2</sup> *Third Report*, p. 26.

<sup>3</sup> *Peerage Law in England*, p. 156.

<sup>4</sup> Sir Francis Palmer accordingly writes that "in the *Norfolk case* . . . it was held that the law as ascertained by declaration of the Lords in the *Grey de Ruthyn* and *Purbeck cases* was applicable to a transaction which took place in the year 1302." (p. 22).

<sup>5</sup> See p. 230 above.

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which takes place just after Parliament began (i.e. in 1302).

Lord Davey : 'The law was the same. Surely you do not say, whatever other people may suggest, that that is not a declaration of the law ?'

Sir Robert Finlay : 'I do not question that for one moment.'

Lord Davey : 'Then the law must be the same, although the people did not know it.'<sup>1</sup>

Sir Robert Finlay : 'Of course, my Lord, that is the theory. I concede that.'

Lord Davey : 'Not the theory, but it is the fact.'

Sir Robert Finlay : 'It is a correct theory.'<sup>2</sup>

Few things are more remarkable than the haste of the lawyers to do obeisance when the sacred ju-ju is held up before their trembling gaze. At a later stage of this same case the then Attorney General expressly associated himself with the argument of Sir Robert Finlay, his predecessor in that office.

Mr. Attorney General : 'My learned friend, Sir Robert Finlay, if I may so submit to your Lordships, used a very strong argument, namely, that although undoubtedly the law is to be gathered as declared by (*sic*) the Grey de Ruthyn case as it was in operation in the seventeenth century, yet it must not be inferred that the same law was in operation in the fourteenth century..... I wish to adopt the argument of my learned friend, Sir Robert Finlay, in regard to that matter'.....

Earl of Halsbury : 'What do you say about it yourself? I should like to hear you upon it. Is it or is it not the state of the law which we must recognise and act upon ?'

Mr. Attorney General : 'I think it is, but I also submit to your Lordships that in these matters, the law may be progressive.'

<sup>1</sup> This is a delightful admission : it is the sacred principle *in excelsis* (see pp. 208-9 above).

<sup>2</sup> *Speeches*, etc. p. 152.



*Earl of Halsbury* : 'May it ? Is that a principle of the law of England ?'

*Mr. Attorney General* : 'My Lord, I think I could find authority for saying that the Common Law is progressive, and it has adapted itself from time to time.'

*Earl of Halsbury* : 'I should like to hear authority<sup>1</sup> for that.'<sup>2</sup>

One thinks of Galileo faintly protesting, in spite of his enforced submission, that the world, after all, does move. "Authority" was against him.

Consider the humour of the position. "Authority" decrees that we must "ascertain" what the law really was in 1302, not by historical methods, not by legal research, but by a vote of the House of Lords in the days of Charles the First. How simple, how admirable the method ! One looks at that monument of toil, the *History of English Law*, and sighs to think of its wasted labour. The hard problems which its authors investigated with patient and untiring skill might have been so rapidly, so simply solved by putting them to the vote in the House of Lords. It is not even requisite that the vote should be relevant to any issue actually before the House ; for the famous 'Grey de Ruthyn' Resolution was only passed "upon somewhat which was spoken of in the argument concerning a power of conveying away an honour"<sup>3</sup>

<sup>1</sup> In a lawyer's mouth, it must be remembered, this phrase only means that some other lawyer had said so.

<sup>2</sup> *Speeches* etc. p. 183.

<sup>3</sup> *Lords' Journals*, 1 Feb. 1640/1. The reference may be to Selden's incidental argument that "if a man that is noble will accept another degree of nobility, whereby his blood may be further ennobled, this may amount to a surrender" ('Collins,' p. 207).

It should be noted that the Grey de Ruthyn Resolution, although, as Sir Francis Palmer observes, "not in any sense necessary to the decision of the case," has "long been treated as valid and binding," as in the recent

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It was carried, as it were, in lightness of heart.<sup>1</sup> There was once a book entitled 'Astronomy without mathematics: ' may we not hope for a companion, 'History without research'? For the Upper Chamber has a new function; it can make history, we learn, in more senses than one.

In the Earldom of Norfolk case it made history with a will. Thomas de Brotherton, the King's brother, was taken, as it were, by the scruff of his neck, and ejected from that earldom of Norfolk which his contemporaries believed him to hold, as did, indeed, every one else down to the year 1906. The King, it was discovered, had no power to confer that dignity upon him in 1312 and the King's father, Edward I, had no power to accept the surrender by Roger Bigod of his earldom in 1302.

"Earldom of Norfolk case" (*Op. cit.* p. 20), while the decision in the Devon case (1831) that a limitation to "heirs male for ever" was a valid limitation to heirs male collateral—though essential in the case—was over-ruled and rejected in the Wiltes case (1869), which turned on precisely the same limitation. The result of this glaring illustration of "the muddle of the law" is that the Courtenays enjoy the earldom of Devon, while the Scropes of Danby do not enjoy the earldom of Wiltes, although the limitations of the two dignities were, admittedly, identical.

<sup>1</sup> In the singular Printed Case (1901) presented on behalf of the Fauconberg etc. Petitioners, on which I have already commented, the extraordinary statement is made that the Stafford creation of Sept. 12, 1640, shows the effect of this Resolution—which was not even passed till some five months *later*! Its author carelessly or stupidly imagined that Roger Stafford surrendered his barony when the Grey de Ruthyn claim was under the consideration of the House, although that claim did not come before the House till nearly a year *later*! His words are:—

"The House had then (*sic*) under its consideration a claim to the barony of Grey de Ruthyn, and though the point had not been brought up at all in the Grey de Ruthyn case, the resolution in that case shows that your Lordships' House took the opportunity of solemnly declaring that a Peerage could *not* be so resigned. The King then (*sic*) *created* Sir William Howard and his wife . . . jointly Baron and Baroness Stafford" etc. etc.

The true dates at once dispose of the alleged sequence of events. As it is a serious matter, surely, to lay before the House of Lords an incorrect statement, this demonstrates the need for counsel's signature to a case (see p. 200). Where, as in this case, there was none, the solicitors should be called on to supply the draftsman's name, even though his excitable loquacity might afford a clue to his identity.

It was vainly urged by the Attorney General that the Grey de Ruthyn Resolution could not apply "to a grant which was made in the fourteenth century at a time when it was universally recognised as a perfectly valid grant..... it is certainly clear that in the early part of the fourteenth century every legal authority, from the Lord Chancellor downwards, considered certainly that this view of the law was right ; and that the King had the right to grant the honour..... the Lord Chancellor of the time who attests this very surrender."<sup>1</sup> Their Lordships knew better.

Edward I, 'the English Justinian,' the great lawyer King, the one English sovereign who has left his stamp upon our law, showed himself as ignorant of the law, in Lord Davey's view, as his own Lord Chancellor. He "was by instinct a law-giver, and he lived in a legal age ;"<sup>2</sup> he was the founder of our Parliament ; and he showed himself so ignorant of law, especially of the law of Parliament, as to accept the surrender of an earldom, in opposition to the Lords' Resolution of 1641.

"The law was the same" then—in the bosom of the infinite, but as it had not yet emerged therefrom, the ignorance of Edward may be pardoned.

Irritability may betray consciousness of a weak position, and Lord Davey resented his reading of the law being questioned.

*Sir Robert Finlay* : 'What I am going to call attention to is the extreme danger of applying this doctrine against surrender to what had taken place so long before.'

<sup>1</sup> *Speeches*, etc., pp. 184-5.

<sup>2</sup> Stubbs, *Const. Hist.* II, 106.

*Lord Davey*: 'Really, you want us to say it was so very early, and the law and the opinion of the people living in King Edward the Second's reign and the King's advisers were so very unsettled, that it is rather hard to enforce the law upon them. That is really what you are saying.'<sup>1</sup>

This, of course, is begging the question whether it *was* "the law" at the time. If we turn to the two legal writers who have concerned themselves with the subject, we find them both accepting, without hesitation, such early surrenders as valid, and specially selecting, as an instance, that of the Earldom of Norfolk. The prohibition of such surrenders only applies, in their opinion, to much later times.<sup>2</sup>

But I will now appeal to a higher "authority," an "authority" such as that, I presume, for which Lord Halsbury asked. Is it the case that the law relating to peerage dignities was "always the same"? Or has it, on the contrary, as I have contended, been subject to development and "change." In his 'judgment' on the famous Berkeley claim, in 1861, Lord St. Leonards, who had himself held the office of Lord Chancellor, and who was "an able, most acute, and most profound lawyer," enunciated—evidently with no idea that it was even open to question—the view which was treated as rank heresy, and which almost excited horror, in the Earldom of Norfolk case.

<sup>1</sup> *Speeches*, etc., p. 153.

<sup>2</sup> See *Cruise on Dignities* (1823), pp. 109-111, and Pike's *Const. Hist. of the Lords* (1894), pp. 269-272. Cruise held that the Grey de Ruthyn Resolution "cannot be considered as having the authority of a law," and Mr. Pike maintained that "Before the days of Charles I" an Earl could surrender his dignity to the King, and that the contrary doctrine is "Lord-made law of comparatively recent growth." Mr. Lindsay, K.C. (a peerage counsel) wrote, in 1902, that "such surrenders were undoubtedly lawful in England down to the reign of Richard II" (*Ancestor*, No. 1, p. 113).

Time, which changes all things, has exercised its power... The law itself, as to dignities, has been greatly changed or modified from age to age.....

I may draw the attention of the Committee to some of those changes to which I had occasion to call the attention of the House upon the question of life peerages..... Again, the right of a Peer to surrender his peerage to the Crown was established by many precedents, which had not been questioned ; but in 1640 this House resolved [the Grey de Ruthyn Resolution]..... So a Peer could be degraded by the King for poverty ; but Parliament alone can now degrade a Peer, &c. &c. (VIII. H. L. C. 99-100) :

It is clear, the reader will observe, that Lord St. Leonards deemed the surrenders of which he speaks to have been in accordance with the law as it existed when they took place. It was not because the law was then "not understood" that such surrenders were possible, but because the law was different, because it "has been greatly changed."<sup>1</sup>

In view of the unquestioned precedents afforded by surrendered earldoms, precedents duly cited by the law officers of the Crown in 1660, 1678, and 1906,<sup>2</sup> there can be no question that the recent decision, applying the Grey de Ruthyn Resolution retrospectively without limit, does violence to history, and overthrows surrenders of dignities effected centuries ago, which no one had ever questioned.

<sup>1</sup> This, it will be seen, amply vindicates the view ineffectually urged by the Attorney General in 1906 (in accordance with that of Sir Robert Finlay) : " Is it a true proposition to say, in deciding cases of this class, that the law does undergo no modification, that . . . the law, which has declared three centuries after that association that the dignity of a seat in this House has been well established, should operate to construe grants of dignities at the time of the very birth of that association, and at a time prior to the birth of that association ? In other words, the dignity has undergone a change, and may it not be that the law undergoes a change with it ? (see pp. 230-1 above).

<sup>2</sup> *Speeches of Counsel* in the Norfolk Case, p. 187. I prepared a special report for the use of the Crown in that case.

We may yet have to reconsider the validity of that most irregular proceeding known as the Norman Conquest, for, although he posed as the rightful heir, it is understood that William I owed his throne to that unfortunate incident, the Battle of 'Senlac' or of Hastings. We may have, therefore, to evict his name from the list of British sovereigns, as that of his descendant, Thomas of Brotherton, has been evicted by the House of Lords from among the Earls of Norfolk. To change the annals and the records of the past seems to be a fascinating task : there are those who would hamstring English history by persuading themselves and others that there never was a Reformation, as there are those who would choke its voice for the greater convenience of the law.

For, after all, it is frankly acknowledged that the justification of this action is the argument from convenience. It was urged by the Committee that they could not administer two different laws, a medieval and a modern,<sup>1</sup> and one quite sees the force of the objection from the lawyer's practical standpoint.<sup>2</sup> One also sees the force of the objection, easy though it is to make, that even admitting changes in the law, there must be named a fixed date, before which the earlier law, and after which the later law ought to be applied. Lord Redesdale fully appreciated this and endeavoured to fix a definite point beyond which the retrospective action of the doctrine derived from the Clifton case should not extend. Pressed upon the point, in the Norfolk

<sup>1</sup> *Speeches* etc., on the Earldom of Norfolk claim, pp. 166, 185-6, 191-4, etc.

<sup>2</sup> But see my remarks on the Fauconberg decision, p. 210 (above) and below.

case, Sir Robert Finlay answered, as an historian would have answered, that the change was too gradual for a fixed point to be named.

*Lord James of Hereford* : 'Can you fix any limit of time when you say the rule does apply and when it does not?'

*Sir Robert Finlay* : 'I could not venture to give any definite date. These things took place so gradually that it would be difficult or impossible to suggest to your Lordships any definite date before which it could be said these resolutions should not apply.'

*Lord James of Hereford* : 'If you cannot do that I do not see how you can suggest what form our judgment should take.'<sup>1</sup>

Quite so. And that is why the law is forced, by the exigencies of its administration, to deny the existence of development or of change in mortal things. For this reason law and history are and must always be in conflict. The law is and must remain medieval in its methods ; it is not the facts that the lawyers seek, but a convenient legal fiction.

But even if the argument from convenience and the practical exigencies are held to justify the repudiation of the facts of peerage history and, as I have expressed it, the re-writing of the past, it is quite possible that this contention may defeat its very object, and may lead to practical difficulties greater than those it would avoid.

To take but a single instance, what of the barony of Abergavenny ? It was gathered, in the Norfolk case, from an observation of Lord Davey's, that, in spite of the lapse of six centuries, if an heir of the Bigods petitioned their Lordships for the earldom

<sup>1</sup> *Speeches*, etc. p. 166.

which his ancestor surrendered to Edward I, they would feel bound to do him justice.<sup>1</sup> But how much more would they be so bound to do such justice to an heir of the body of Lady Fane, petitioning for the old barony of Abergavenny on the ground that its transference to Edward Nevill, in 1604, was against "settled law"! Every argument that justified their Lordships in deliberately rejecting and undoing the work of the first two Edwards would apply with greater force to the action of James the First. For if the proposition that an earldom, in the days of Edward I, could not legally be surrendered is at least highly disputable, it will hardly be disputed that, in the days of Elizabeth and James I, a barony in fee could only pass to the heir of the body. And again, if it is historically wrong to project into the Middle Ages a principle first enunciated in the days of Charles I, no such violence to history is involved in its application to his father's days.

If then, to adapt Lord Davey's words, "we had an heir of the body on one side of the Bar, and Lord" Abergavenny "on the other side of the Bar, could there be any doubt what" their Lordships "decision ought to be between them?" If, as Lord Ashbourne puts it, the petitioner took his stand on the fact that he was heir in blood, and

<sup>1</sup> "It seems to me you must look at this case just as if we had an heir of Roger le Bygod before us now. We are just as much bound to protect the interests of an heir of Roger le Bygod as if he was before us now. If we had an heir of the body on one side of the Bar, and Lord Mowbray on the other side of the Bar, could there be any doubt what our decision ought to be between them?"

Lord Ashbourne followed with the same question. If the party claiming to be such heir demanded the earldom, "what would be the answer to be given to that?"



that the diversion of the dignity from his ancestors "should not be now recognised, what would be the answer to that?"<sup>1</sup> Well, there is only one answer, surely, that could be attempted: it is that the dignity was a barony by tenure and descended with the lands.<sup>2</sup>

And this is an answer which at the present day the House cannot give.<sup>3</sup>

Lord Davey, it is true, endeavoured to guard himself by observing that "the thing is quite different to our being asked to disturb an existing state of things, and it may be (that) the House would not be disposed to advise the Crown to take away, for instance, an Earldom which had existed to the present time."<sup>4</sup> But, apart from the vaunted principle that "the law is always the same," and apart from the fact that in peerage dignities there is no prescription, it would not be a case of taking away from the Nevills the barony of Abergavenny, but merely of following the well-known precedent in the cases of Strange and Clifford. In the case of both these baronies a person who was not the heir general was summoned to Parliament (1628) and allowed the old precedence precisely as

<sup>1</sup> *Earldom of Norfolk: Speeches*, etc., p. 185.

<sup>2</sup> There was no Act of Parliament to ratify the diversion, and a lost patent could not be urged, for all the facts of the case are known, and Edward Nevill did not even suggest the existence of a lost patent, but based his claim on tenure.

<sup>3</sup> In the Berkeley case (1861) "the speeches of the members of the Committee are replete with learning and research, and may be said to finally and effectually dispose of the notion that there are any baronies by tenure now in existence." (Palmer's *Peerage Law in England*, p. 183.) "It may now be taken as settled that, if there ever were, there are now no longer any peerages by tenure in England." (*Ibid.*, p. 186.)

The allegation that the barony of Abergavenny is a barony by tenure was, indeed, expressly discussed and rejected by Lord St Leonards, Lord Chelmsford, and Lord Redesdale in their judgments on the Berkeley claim.

<sup>4</sup> *Earldom of Norfolk*, etc. p. 185.

Edward Nevill had been in 1604. In both cases the heir of that person retained the barony, but with the precedence only of 1628, the original barony being recognised to be vested in its true heirs.<sup>1</sup>

Whatever additional sanction the action of James I may be conceived to have given to the diversion of the barony of Abergavenny from its descent to heirs-general is effectually disposed of by the fate of his son's similar action in the case of the baronies of Conyers and Darcy. The heir (or co-heir) of these dignities actually took his seat in 1641 under a Patent diverting their descent in favour of the heirs male of his body,<sup>2</sup> and yet the House, in the teeth of this action, has allowed Conyers (1798) and Darcy (1903) to his heirs or co-heirs general. Every objection to a claim by the heirs of Lady Fane's body to the ancient barony of Abergavenny has now, I submit, been disposed of : every bolt-hole has been stopped.

But the cream of the matter is this. In strict accordance with the precedents in the cases of Clifford and of Strange,<sup>3</sup> the Nevills' barony of Abergavenny would be reckoned as dating only from the summons of 1604. But *this* barony should have left the family, with an heiress, in 1641, and

<sup>1</sup> See 'Cruise,' pp. 224-234. "The writs of 1628 having been, it was admitted, issued in error to the above persons, the house of Lords conceived themselves obliged to admit that the writs operated as new creations of baronies, and resolved accordingly."

<sup>2</sup> This is an even stronger case than that of Abergavenny, in which there was no Patent or limitation.

<sup>3</sup> On precisely the same principle the baronies of 'Willoughby de Parham' and 'Percy' created, in error, by writ and sitting in 1680 and 1722, are considered to be now respectively vested in the heirs of the person summoned in 1680 and in the Duke of Atholl.

be now vested in her heirs. A *second* Nevill barony of Abergavenny would then be created by the writ of 1661 (if a sitting can be proved), only to pass away with an heiress in 1695. A *third* Nevill barony of Abergavenny would then be created by the writ issued in 1695, fall into abeyance in 1724, and become vested in a sole heiress in 1737. And a *fourth* would be created by the writ issued in 1724 to William Nevill and be now vested in the Marquis of Abergavenny as not only the heir male, but the heir general of his body. There would thus be at this moment *five* baronies of Abergavenny extant, dormant, or in abeyance.

In this conclusion there is nothing fanciful, no *reductio ad absurdum*. It is a sober and serious application of principles fully recognised, of absolutely settled law. The representatives of any one of the above three heiresses could raise the question at any moment, as well as those of Lady Fane, on the ground that a writ followed by a sitting created a barony in fee. The House, we learned in the Norfolk case, can only administer the law as declared and settled; and by that law the claim would be good, and the King's attempt to alter the succession to the old barony, in 1604, *ultra vires* and invalid.<sup>1</sup> The whole reasoning in the Norfolk case applies with tenfold force.

The doctrine of the Clifton case, which has led me to this discussion was, we have seen, sound at

<sup>1</sup> As the famous shifting clause in the Buckhurst Patent (1864) was pronounced to be in 1876, and the Wiltes limitation to the grantee and his heirs male for ever in 1869. Lord Redesdale, indeed, in his 'judgment' on the Berkeley peerage claim (1861), bluntly denounced the compromise of 1604 as an "illegal job,..... which was not creditable to the House."

the time of its promulgation. It was then, gradually at first, extended retrospectively till it reached an age when, in the opinion, not only of historians, but of not a few legal writers, it ceased to correspond with the facts. But its progress could not be arrested ; Lord Redesdale tried, but failed to limit its application, not being able to convert a gradual process of development into a fixed point such as the law requires. The point I desire to emphasize is that the result was certain ; the doctrine that a single writ and sitting created an hereditary barony even under Edward I may be, and doubtless is, historically quite false, but the law's practical requirements made it an inevitable result.

The next question with regard to the case of the barony of Clifton is : " Does the Resolution of the House justify the use that has been made of it ? " <sup>1</sup> One may venture to submit that it most certainly does not. The wording thereof is curiously terse : — " That the said Catherine Lady O'Brien hath right to the barony of Clifton. " It is obviously quite impossible to deduce from this Resolution any general principle. Lord Redesdale rightly insisted on the restricted character even of the Judges' Opinion, which applied only to the claim before them ; and he would probably have assigned to it an even smaller range than he did, had it not been for his strange mistake in supposing the claim to be the first of its kind.

In any case, there is nothing, we see, in the Resolution itself as to the operative effect of a writ and sitting in Parliament or as to the great doctrine

<sup>1</sup> See p. 218 above.

of "ennobled blood." It is on this point that Professor Freeman came so terribly to grief. In 1885 he violently charged the Lords with "corruption or usurpation," because "the Lords laid down the rule that the King's writ 'ennobled the blood' and bestowed a hereditary seat in Parliament—a thing which nobody would have found out from the writ itself," and accused them of having "always acted with the very narrowest aim of narrowing the access to their own body, in the interest of the phantasy of 'ennobled blood.'"<sup>1</sup> He even went so far as to charge the Lords with inventing this doctrine in order to keep the Judges out of their House.

It was the superstition, perhaps one should rather say the cunningly devised fable, about hereditary right, ennobling of blood, and the like, which kept them out for ages.<sup>2</sup>

There is grim humour in the thought that, as we have seen, the "phantasy," the "fable" of "ennobled blood," was, in the first place, invented, not by the Lords, but by the judges themselves; in the second, was clearly derived by them from Coke, who was himself a Judge; and in the third, was ignored by the Lords, from whose Resolution it is absent. And yet there are those who still believe in Professor Freeman's accuracy.

One turns, with a sense of relief, to the last remaining question,<sup>3</sup> viz., the limit to which the doctrine is retrospective, a question which involves

<sup>1</sup> *Studies in Peerage and Family History*, pp. 5-6.

<sup>2</sup> *Ibid.* p. 7.

<sup>3</sup> See p. 218 above

determining the date of the first true Parliament. It is easy to say that a summons to, and a sitting in Parliament create an hereditary barony ; but what is meant by “ Parliament ” ? Is it a body which is so styled ? Or a body which discharges legislative functions ? Or a body in which the three estates are all duly represented ? This is a question which the House of Lords has not definitely settled.<sup>1</sup>

With his wonted caution Stubbs observed that

It is convenient to adopt the year 1295 as the era from which the baron, whose ancestor has been once summoned and has once sat in parliament, can claim to be so summoned.<sup>2</sup>

But here again the reason is that of “ convenience.” The historian is careful to explain that this epoch “ owes its legal importance to the fact that it was used by the later lawyers as a period of limitation, and not to any conscious finality in Edward’s policy.” Less clear is the footnote appended to the passage quoted above :—

The importance of 1264 and 1295 arises from the fact that there are no earlier or intermediate writs of summons to a proper parliament extant ; if, as is by no means impossible, earlier writs addressed to the ancestors of existing families should be discovered, it might become a critical question how far the rule could be regarded as binding.

But what rule ? That which makes the parliament of 1295 the first to which the writs are valid ? Or that which would extend the same

<sup>1</sup> Sir Horace Davey (as he then was) made a point of this in the *Wahull* case.

<sup>2</sup> *Const. Hist.* (1875), II, 184.

validity to the writs of 1264? Stubbs himself appears to have recognised without hesitation Simon de Montfort's Parliament: he styled it "The great Parliament of 1265,"<sup>1</sup> and described it as a "parliament" throughout.

As a matter of fact there are no fewer than four possible 'first' Parliaments from the standpoint of Peerage Law. They are those of 1265, 1283, 1290, and 1295. Two baronies (De Ros and Despencer) date from the first, two (Mowbray and Segrave) from the second, one (Hastings) from the third, while as to the fourth there is no question. It seems an impossible task to reconcile with any principles the dates assigned to these creations.

For those assigned to De Ros and Despencer we must look to the reign of James I. When the letters patent of that sovereign assigned to Lady Fane, in 1604, the old barony of Despencer, they expressly gave it a precedence dating from the summons of Hugh Despencer in 1264 (49 Hen. III).<sup>2</sup> And when, in 1616 (22 July), the same sovereign made a similar assignation of the barony of Roos, the instrument recited the report to His Majesty by the Commissioners for Earl Marshal "that in the record of the sessions of parliament, in the forty and ninth year of King Henry III, Robert de Roos was summoned, and did sit in Parliament as baron, by the name of lord Roos," etc. This extremely definite and somewhat startling statement must be based, to a great extent, on the Commissioners' large imagination; for no such

<sup>1</sup> It was summoned Dec. 14, 1264, to meet on Jan. 20 following.

<sup>2</sup> See on this point the *Lords' Reports*, I. 438-440.

“ record of the sessions of parliament ” is known to historians. There is only a record of the summons addressed “ Roberto de Ros. ” It is generally but erroneously stated<sup>1</sup> that the date of 1264 as that of the (De) Ros creation was fixed by the Lords’ decision in 1806. That decision did, however, fully confirm the date assigned to it, as we have seen, so far back as 1616.<sup>2</sup>

We pass to the barony of Hastings. This dignity was decided, in 1841, to be vested in “ the co-heirs of Sir John de Hastings, who was summoned to and sat in Parliament Anno 18 Edward I ” (1290).<sup>3</sup> Here we have a new Parliament introduced as supplying the root of title, a Parliament which came between those of 1265 and 1295. It was proved that the above John was summoned in 1295, and his father in 1264, the writs of the latter year, it would seem, being still (1841) accepted as valid. But the sitting was deduced from a record relating to the ‘ Parliament ’ of 1290, a summons to which was assumed from the fact of that sitting, a new precedent being thus created, a precedent which affected other baronies.<sup>4</sup>

<sup>1</sup> e.g. in *The Complete Peerage* throughout.

<sup>2</sup> The writ of 1264 seems to have been accepted by both parties and by the Attorney General (‘ Cruise,’ pp. 48-51, 191-2,) and was certainly so accepted in the Lords’ Resolution, which spoke of the Barony as “ vested in the said Robert de Ros.”

<sup>3</sup> Sir Francis Palmer deals with this important case (*Peerage Law in England* pp. 41-3), but erroneously dates the creation “ 23 June 1295 ” (*Ib.* p. 176.) It is often wrongly given.

<sup>4</sup> Lord Cottenham, delivering judgment, appears to have relied on the words in this document—“ in pleno Parlamento ipsius domini Regis..... et ceteri magnates et proceres tunc in Parlamento existentes.” But this is begging the whole question of what the word ‘ Parliament ’ denoted at that date. Stubbs admits that, even subsequently to the point of division adopted by him, namely the great Parliament of 1295, “ for many years both the terminal sessions of the King’s ordinary council, and the occasional assemblies of the *magnum concilium* of prelates, barons, and councillors, which we have noticed as a great survival of the older system, share with the constitutional



This being so, it is difficult to see why the barony of Hastings was not further allowed to date from the sitting peer's father's summons, in 1264. For in the Ros case the proof of the sitting is found at an even later date and in the lifetime of the grandson, not the son, of the baron summoned in 1264. Hastings, therefore, would have the stronger claim of the two. The barony was claimed as created by the writ of 1264,<sup>1</sup> nor was that writ questioned; for the creative validity of the writs of 1264 was not rejected, or even doubted, till a generation later (1877).<sup>2</sup> But the attempt to refer the sitting of 1290 to the writ of 1264 was thus disposed of—apparently without argument—in the Lord Chancellor's 'judgment.'

"Then take Sir John de Hastings as the first Peer who sat—because there is no evidence of Sir Henry de Hastings<sup>3</sup> having sat, though no moral doubt can exist

assembly of estates the name of Parliament" (*Const. Hist.* [1875] II, 224-5). And he instanced summonses in 1297 and 1299. For the loose use of the word Parliament previous to 1295 see the *Lords' Reports*, I, 29-30.

His lordship's position was this:—"The grant is stated to have been not properly the subject of a grant by Parliament; but whether the subject of a grant by parliament is, I apprehend, not material, provided it appears clearly that it was a proceeding in Parliament..... There is nothing to impeach this document as having been a proceeding in Parliament; it is therefore a Parliamentary proceeding," etc. Here again the point is missed. The objection raised—apart from the subject of the grant, which "directly affected only the tenants-in-chief of the Crown"—is that there are grounds for supposing the Assembly to have been composed, at the time, of such tenants only, without representatives of the counties or boroughs (*Lords' Reports*, I, 199-201.) As the House appears to have a strong tendency (e.g. in the Wauhull case) to accept only records relating to properly constituted Parliaments, the validity of this document as proof of sitting appears to be open to question.

<sup>1</sup> The claimant's counsel was Sir Harris Nicolas.

<sup>2</sup> Their validity seems to have been fully accepted in the *First Report on the Dignity of a Peer* (1820), where we read that they "are generally considered as the earliest Writs of Summons to Parliament now extant on Record" (p. 142). They were also treated as valid in Courthope's *Historic Peerage* (1857) throughout (p. xxv and *passim*), and apparently, as we have seen, by Stubbs (1875).

<sup>3</sup> Summoned in 1264.

of his having been the peer from whom Sir John de Hastings derived his title, but when a party is claiming a dignity and he derives his title from some individual as his ancestor, he is bound to show the concurrence of these two circumstances, of a summons and a sitting in that ancestor<sup>1</sup>—it appears to me that your Lordships are acting in accordance with the principle which has regulated your former proceedings in cases of this sort in coming to the conclusion upon the evidence that Sir John de Hastings was summoned and sat in the Parliament of 18th of Edward I. ”

But the dating back of a creation from the first proved sitting to the first issued summons—one or more generations earlier—is a point which, important though it is, seems to be curiously obscure. In delivering judgment on the Wahull claim (27 June, 1892), the then Lord Chancellor made the startling statement (speaking of the Mowbray case) :—

I do not think that case is any authority against the uniform course of decision of your Lordships' house, which certainly does not allow of the proposition that where a Peerage is established, you are entitled to refer its date to the earliest Writ of Summons that can be proved.

With regard to this “uniform course of decision,” it is clear, as we have seen, in the De Ros case (1806) that the House did refer the creation to the earliest writ of summons (1264). It is confidently stated by Nicolas that this was also done in the Botetourt case ; but this, though apparently it was so, may

<sup>1</sup> This *dictum* is most important. The principle it enunciates had been violated in the case of the barony of De Ros (1806), and was here (1841) asserted (and in the Scales case [1856] questioned) only to be violated anew in the Mowbray case (1877), and then enunciated anew in the Wahull case (1892) as the “uniform” practice of the House !

be open to dispute.<sup>1</sup> To these examples the printed Case for the Fauconberg etc. petitioners adds those of Botreaux, Despencer, Clifford, Berners, and Zouche of Haryngworth. Zouche seems to be a clear case (1807), as the House found the barony to have been "created by writ in the reign of Edward II," though the earliest proved sitting is that of the first peer's grandson late in Edward III's reign. In the Clifford case (1691) the lords found that the petitioner was "the sole lineal and right heir to Robert de Clifford, first summoned to Parliament as lord de Clifford by writ dated Dec. 29, 28 Edward I" (1299), though the first proved sitting is that of his grandson, the fifth peer. These cases are sufficient to cast a strange light on the "uniform" practice of the House.

We next come to the baronies of Mowbray and Segrave (1877). This notable case effected a double revolution. On the one hand the validity of the writs of 1264, till then apparently accepted, was rejected by the Committee on constitutional grounds, the summons to Nicholas de Segrave in 1264 being consequently disallowed. On the other, the writs to the 'Parliament' of Shrewsbury, in 1283, which no one, it would seem, with one exception,<sup>2</sup> had ever imagined to be valid, were accepted without question. The Minutes of Evidence on the Hastings case (1841) reveal the accept-

<sup>1</sup> Nicolas deals fully with the case in his *Barony of L'Isle*. The proof of sitting was for the second peer; the first writ was addressed to his grandfather, the first peer. As they were both named John, the terms of the Resolution are ambiguous. And the precedence assigned in 1764 is, admittedly, against the view that the peerage dates from 33 Edw. I.

<sup>2</sup> *Lords' Journals*, 12 Dec. 1691.

<sup>3</sup> Palgrave had accepted them in *Parliamentary Writs* (1830-34).

ed view. Sir T. D. Hardy, the well-known head of the Public Record Office, gave evidence as follows :—

Q. Have you made any search whether there are any writs of summons to Parliament from the forty-ninth of Henry the Third (1264) to the twenty-third of Edward the First (1295) ?

A. I have.

Q. Do you find any ?

A. I do not.

So much for the writs issued in 1283. It was very properly pointed out by the eminent peerage counsel <sup>1</sup> who appeared for the petitioner that to rely on the writ of summons to this Parliament was a new step. <sup>2</sup> He urged that the passing by this Assembly of the Statute *De Mercatoribus* proved it to be a Parliament : “ Therefore I submit that the Writ of the 11th Edward I is a regular Writ of Summons to Parliament. ”

The extraordinary thing is that, though they were thus warned that the writ was a new one to use, and that its validity had to be proved, the Attorney General and the Committee appear to have accepted it as valid without argument or question. And what makes it the more extraordinary is that the Attorney successfully challenged the validity of the writs of 1264, till then accepted by every one, and was thus left face to face with those of 1283 as the earliest writs, if valid, in the case both of Mowbray and of Segrave.

<sup>1</sup> Mr. Fleming.

<sup>2</sup> “ My Lords, that summons has not hitherto received the attention to which it is entitled. It was Sir Francis Palgrave in his very learned book (1830) upon writs of summons who first drew attention to the fact that it is a summons to Parliament. ”

All this was brought out clearly, fifteen years later, on the claim to the barony of Wahull (1892). The two 'Parliaments' to which writs were produced by the petitioner for that barony were those of 1283 and 1297. On behalf of his claim it was urged by counsel<sup>1</sup> that the writs of 1283 had been admitted as valid in the Mowbray and Segrave Case. The Attorney-General at once challenged the *status* of this 'Parliament,' pointing out that "no prelates were summoned" and that in the Mowbray and Segrave case "there was no discussion as to whether this Parliament was a true Parliament." <sup>2</sup> The point was keenly argued throughout, <sup>3</sup> the Committee being obviously most reluctant to accept the Assembly as a Parliament, a reluctance the more notable in view of the fact that proof of sitting was admittedly lacking, so that the claim might have been rejected upon that ground alone. After reading the Segrave minutes relative to this 'Parliament,' the Lord Chancellor observed :—"I see no argument in that case" <sup>4</sup> ..... "the Attorney General's contest was with regard to the 49th of Henry III, and he appears to have acquiesced (and the matter is not argued) in its being a Parliament in the 11th of Edward I" ..... "It is not argued." <sup>5</sup> In their Judgments the Lord Chancellor dismissed the alleged summonses with the observation that they "leave it doubtful whether they were summonses to Par-

<sup>1</sup> Sir Horace Davey.

<sup>2</sup> *De Wahull Peerage : speech of Counsel*, pp. 27, 40.

<sup>3</sup> pp. 21-43, 45-6.

<sup>4</sup> *Ibid.* p. 45.

<sup>5</sup> *Ibid.* p. 46.

liament at all," while Lord Selborne spoke with extreme caution of the 1283 Assembly :—

Lord Cairns in the Segrave case appears to have thought that Assembly a Parliament, service in which, under a writ of summons, might confer an inheritable right of Peerage, and for the present purpose I am content so to take it, although no spiritual Lords were then summoned. I must guard myself, however, against being understood to affirm that proposition, if it should become material in any case that may hereafter arise.

The truth is, if one may speak plainly, that their Lordships were hampered throughout by the unfortunate, but undoubted acceptance of these writs as valid, in 1877, by Lord Cairns, without having had the point argued. Their keen intellects were engaged in desperate attempts to explain away that acceptance, in spite of its emphatic language :—

" the fact that is established before your Lordships is this, that the first *perfectly valid Writ of Summons*, which is proved before your Lordships is a Writ of Summons addressed to Nicholas de Segrave in the 11th of Edward I. A sitting afterwards took place and would be referred to that Writ of Summons. "

Lord Selborne, in his Judgment, even maintained that

The Resolution of the Committee for Privileges in the Segrave case which Lord Cairns moved did not affirm it ;<sup>1</sup> it was only " that the barony of Segrave was in the reign of Edward the First vested in Nicholas de Segrave ; " and, as Nicholas de Segrave sat in the Parliament of the 18th year of that King, <sup>2</sup> that proposition was open to no doubt.

<sup>1</sup> The validity of the writ.

<sup>2</sup> Here, it should be observed the ' parliament ' of 1290 is accepted, without reservation, as valid (cf. p. 250 above).

One would wish to speak with all respect of any Judgment by Lord Selborne ; but this is a curiously weak attempt to escape from the consequences of that Resolution. For the Resolution on the *Mowbray* claim is proof that the Segrave Resolution was in no way dependent on a sitting. The Mowbray and Segrave Resolutions were identical, *mutatis mutandis* ; and the Mowbray Resolution ran :—

That it is proved by the Writ of Summons addressed to Roger de Mowbray in the 11th year of Edward I, and the other evidence adduced on behalf of the Petitioner, that the Barony of Mowbray was in the reign of King Edward I vested in Roger de Mowbray.<sup>1</sup>

Now there is no evidence that Roger de Mowbray “ sat in the Parliament of the 18th year of that King ” or indeed in any of his Parliaments. The earliest proof of sitting is in the time of Roger’s son, the second peer, who is proved by the Parliament Roll of 12 Edward II to have sat late in the year 1318.<sup>2</sup> Consequently, the Mowbray Resolution presents no such loophole as that for which Lord Selborne sought. The proposition that “ the Barony of Mowbray was *in the reign of King Edward I* vested in Roger de Mowbray ” is based on writ, and on writ alone. And the writ of 11 Edward I, “ the first perfectly valid writ of summons which is proved before your Lordships,” was the writ which Lord Cairns here deliberately selected.<sup>3</sup>

<sup>1</sup> i.e. before his death in 1295.

<sup>2</sup> This was the earliest proof that counsel could produce (*Mowbray minutes of evidence*, p. 35 : 30 May 1876).

<sup>3</sup> If a sitting in the reign of Edward I was thus deemed unnecessary to the proposition in the Mowbray case, it cannot be held to have been necessary to the same proposition in the Segrave case.

So far as I can find, this point has always been overlooked.

The attempt, therefore, to explain away the full recognition, by Lord Cairns, of this writ as valid, breaks down absolutely. It was rightly insisted throughout by the Wahull petitioner's counsel that the writ of 11 Edward I must have been treated by Lord Cairns as a writ of summons to Parliament and operating fully as such. It was valid, or it was not : there was no middle course.<sup>1</sup> That this, indeed, is the lawyer's view is seen in Sir Francis Palmer's work, in which we read of " the Mowbray case having recognized a peerage, as created by sitting (*sic*), as dating as far back as 11 Edw. I," and are definitely told that " it was held that the Mowbray barony was created by summons and sitting (*sic*) in 11 Edw. I. " <sup>2</sup> But here again one must correct the lamentable inaccuracy of lawyers ; for in the Mowbray case, as we have seen, there is no proof of " sitting " in the 11th or any other year of Edward I.

And now we must go further. As there was no such proof till the days of the second peer, it follows that the sitting in his case must have been referred back to make the writ to his father in 11 Edw. I operative as a creation. For in that father the barony of Mowbray was declared, we have seen, to be vested. What then becomes of the assertion made by the Lord Chancellor that the uniform practice of the House is against any such doctrine as " that where a Peerage is established,

<sup>1</sup> The Committee had striven to draw the subtle distinction that the writ might be valid, though the Parliament was not, if it were issued to a person proved *aliunde* to be a peer, and that it might thus be used for determining his precedence only. In the Wahull case it stood alone and, could not, therefore, on this hypothesis, prove a creation.

<sup>2</sup> *Peerage Law in England* (1907) pp. 27, 45.



you are entitled to refer its date to the earliest Writ of Summons that can be proved" ?<sup>1</sup> And what becomes also of Lord Selborne's observation, in his Judgment on this same case :—

I hardly think it probable that so great a lawyer as Lord Cairns can have meant to say (what seems to be attributed to him by the shorthand writer of the proceedings in that case) that a sitting<sup>2</sup> in the Parliament of 1290 ought to be "referred" to a Writ of Summons to an earlier Parliament held seven years before.<sup>3</sup>

For Lord Cairns, we have seen, went much further than that in "referring" back the barony of Mowbray to an earlier generation and, in so doing, was but reverting to a recognised practice of the House.

Yet on this point the Mowbray decision effected a third revolution. For if the sitting of John de Mowbray proved that the barony was "vested in" his father who was summoned, then the sitting of John de Hastings should have proved that the barony was vested in *his* father who was summoned, which is precisely what Lord Cottenham, in 1841, had definitely refused to admit. And—which is far more important<sup>4</sup>—the sitting of Roger de Scales should have proved that the barony was vested in *his* father (who was summoned to Parliament as his father and grandfather had been summoned before him), which was the very point at issue in the Scales peerage case (1856), the view

<sup>1</sup> See p. 252 above.

<sup>2</sup> i.e. of Nicholas de Segrave.

<sup>3</sup> It must be remembered that there are no writs of the 1290 'parliament' on record.

<sup>4</sup> For it involved, not mere precedence, but the actual existence of the peerage.

taken in the Hastings judgment that the 'sitting' of a son did not constitute such proof being, if it were upheld, fatal to the claim of the petitioners, who were descended from the father, but not from the son.

Writing in 1900 I ventured to observe :—

When it is added that the contested writs of 1294 and 1297 were also allowed to be put in evidence without question, and that the writ of 1283 affected a hundred baronies, it will be seen that the Mowbray decision (1877) unconsciously wrought a revolution, and that the history of baronies by writ must now be undertaken *de novo*.<sup>1</sup>

It was due, avowedly, to that decision that the barony of Fauconberg was claimed in 1901 as "created by the writ of 1283, which in the Mowbray and Segrave Peerage Case was held to be the earliest writ to which the creation of a Peerage could be assigned." <sup>2</sup> In the same Printed Case, however, when it was desired to depreciate this writ, for the purpose of the Meinill claim, its author wrote of it as follows :—

The 1283 writ, which had been previously allowed in the Mowbray and Segrave case, was in the De Wahull case distinctly disallowed as being in itself a creative Peerage writ, it being held that the summons was not to a properly constituted Parliament, and that, therefore, a Peerage could not be based upon it, though it seemed to be admitted that where other and better evidence could be

<sup>1</sup> *Studies in Peerage and Family History*, p. 10. The standard work of reference on the subject at the time was Courthope's *Historic Peerage* (1857), in which 1264 was accepted as the date of the first valid writs, while those of 1283 were ignored. It would have, therefore, to be re-written.

<sup>2</sup> Printed Case p. 1. We also read, on p. 9, that "the validity of this summons to Parliament as creating a Peerage dignity was admitted in the Mowbray and Segrave Case," and on p. 10 it is spoken of as "the earliest writ (1283) which (since the Mowbray and Segrave Case) is admitted to possess creative powers."

produced of the existence of the Peerage, the 1283 writ might be allowed for the purpose of precedence (p. 22).

In the course of the proceedings on this claim (1903) the question of this Parliament's validity was fought out over again and at very great length, the Mowbray and Segrave case (1877) being cited in its favour and the Wahull case (1892) as impugning it. It is needless to repeat the arguments for and against, Mr. Asquith<sup>1</sup> upholding the validity and the Attorney General (Sir Robert Finlay) marshalling the objections. We who watched the case considered the Committee to be divided in opinion, the Lord Chancellor apparently relying on the acceptance of the ordinance *De mercatoribus* as a statute (which only a Parliament could have passed), while Lord Davey appeared to consider the *status* of the Assembly doubtful. It is worthy of notice that some importance was attached to Stubbs' views, everything he had said of this Parliament being read to the Committee. It is clear that the historian did not recognise the Assembly as a true Parliament, but the Lord Chancellor declined to accept anything but decisions of the House as authoritative on that subject.

In spite of the elaborate and, it might be thought, exhaustive discussion of the subject, one aspect of the matter seems to have been overlooked. Whatever lawyers may think of it, peerage students, undoubtedly, would consider it of great importance. This is the issue of writs in 1283 to persons who were never summoned to a Parliament of clear validity. So far as I can ascertain from an analysis

<sup>1</sup> now Prime Minister.

of the writs, *no fewer than half*<sup>1</sup> the 'barons' summoned on this occasion belonged to this category. To me personally this is a fact which is more hostile than any other to this Parliament's validity.

But observe the 'happy go lucky' ways of English Peerage law. The validity of writs to this Parliament was deemed, in 1892 and again in 1903, so difficult a point that it was argued at great length. And yet, when they were first relied on, in 1877, Lord Cairns and his colleagues accepted them without 'argument' and even without 'discussion.'

Keen as was the fight in the Fauconberg case, the point was there, really, of very small consequence; for as there was a writ to the Great Parliament of 1295, it was only the precedence of twelve years that was at stake. Of far greater consequence was the real issue in the case, namely whether the barony should be admitted as dating from the days of Edward I (whether 1283 or 1295) or from those only of Henry VI, when William Nevill, who had married the heiress of the Fauconbergs, was summoned to and sat in Parliament, as Lord Fauconberg, being the first bearer of that title of whom a sitting can be actually proved.<sup>2</sup>

<sup>1</sup> Out of the 98 (excluding Griffin the Welshman) only 49 were ever summoned to a Parliament of certain validity. Some of the others were summoned to the invalid Parliaments of 1294 and 1297, but the majority of them were summoned on this occasion only.

<sup>2</sup> It was attempted to use the "Barons' letter to the Pope" in 1301 as proof of sitting, but it was known to be very doubtful if this could be done, and the Printed Case admitted that "there is no proof in the Rolls of Parliament that any Lord Fauconberg sat in Parliament" (i. e. down to the extinction of their male line). The failure of the attempt must be held to show (as in the Hastings case) that the House will not accept the Barons' letter as proof of sitting. Indeed the evidence now at our disposal makes it impossible to accept it as such (see my paper in *The Ancestor*, No. 6, pp. 185 et seq.).

We opposed, for the Crown, the earlier precedence, and I shall now show that it was disallowed, and rightly disallowed, by the House. On the left is the precedence asked for by the petitioners' counsel : on the right the Lord Chancellor's motion and the resolutions agreed to.

Mr. Asquith.

We submit, therefore, that the proper resolution to be come to is that, as regards the Barony of Fauconberg, it is a barony which is shown to have been in existence in 1283 <sup>1</sup>..... we ask your Lordships to say that the peerage existed at the time when the first producible Writ of Summons (1283) was issued.

The (Mowbray) Resolution is "That it is proved by the Writ of Summons addressed to Roger de Mowbray in the eleventh year of Edward I (1283) and the other evidence" — that is the only piece of evidence that is specifically mentioned in the petition, and I say at once the Petitioners in this case would be satisfied with a Resolution in that form, if it is proved that there did exist in the reign of Edward I a Barony of Faucon-

The Lord Chancellor.

My Lords, I move that the Committee do report to the House that, in the case of the Barony of Fauconberg, a writ was issued in the fourteenth year of Henry VI, and a sitting took place under the writ so issued of that date.....

*Ordered* to report to the House :—

That the Barony of Fauconberg is an ancient barony in fee.

That it is proved by the Writ of Summons addressed to William Nevill in the seventh year of Henry the Sixth, and by the sitting in Parliament of the said William Nevill as Lord Fauconberg in the 14th year of Henry VI, and by the other evidence adduced on behalf of the Petitioners, that the Barony of Fauconberg was in the reign of King Henry the

<sup>1</sup> *Speeches*, etc. p. 190.

berg. Your Lordships there have a direct precedent in the Mowbray case.<sup>1</sup> Sixth vested in William Nevill in right of his wife Joan.

One has only to compare the two columns to see that their Lordships did indeed follow the Mowbray precedent—so far as its form was concerned—but with the result of emphasising the sharpness of the contrast. They resolved that the barony of Fauconberg existed, *not* (as they were asked to find) “in the reign of Edward the First,” but “in the reign of King Henry the Sixth,” when it was “vested in William Nevill.” Admittedly, there were two reigns to which the creation could be assigned; and it was the later reign that their Lordships chose.

So much at least is clear. A dialogue earlier in the case had brought out the point well.

*Lord Davey* : “You have no evidence that he sat at Shrewsbury (1283)—assuming that to be a Parliament.”

*Mr. Asquith* : “Only that he was summoned.”

*Lord Davey* : “Have you any evidence that he sat?”

*Mr. Asquith* : “No, there was no evidence that anybody sat there.”

*Lord Davey* : “Therefore the first sitting you prove is the sitting of William Nevill in right of his wife.”<sup>2</sup>

*Mr. Asquith* : “Unless we prove the sitting at Lincoln,<sup>3</sup> that is so.”

*Lord Davey* : “Then, from the fact of his sitting in the reign of Henry VI, you ask to give precedence to the peerage to the Shrewsbury writ.”<sup>4</sup>

<sup>1</sup> *Ibid.* pp. 211, 212.

<sup>2</sup> So also Lord Davey observed (just previously) : “Unless Mr. Asquith can make out the sitting at Acton Burnel, and that Acton Burnel was a Parliament, and the sitting at Lincoln, he must rely upon this, must he not?” (p. 207).

<sup>3</sup> i.e. by the Barons' letter to the Pope.

<sup>4</sup> *Minutes*, etc. p. 211.

And this their Lordships would not do. The Shrewsbury writ they ignored.

But in view of the fact that two baronies were allowed by this decision, and that it had a most important bearing on the Parliament of 1283, on the Barons' letter to the Pope (as proof of sitting), on the relation of summons to sitting, and on enjoyment of dignities by the curtesy, it is much to be deplored that no Judgments were delivered on that occasion. We are left to interpret the Resolution as best we can without them.

This is the more to be regretted because we are at once struck by the startling discrepancy between the Chancellor's motion and the Resolution in which it was embodied.

- (1) The Chancellor selected with much precision the writ of 14 Henry VI, under which the first sitting actually took place. The Resolution, on the contrary, selected, instead, the writ of 7 Henry VI. An important point of principle was involved in this alteration.
- (2) The extremely important words "in right of his wife Joan" were added in the Resolution. The doctrine of curtesy<sup>1</sup> in dignities, categorically denied as to modern, and questioned as to early times,<sup>2</sup> was thus formally affirmed,

<sup>1</sup> I use this term in preference to *jure uxoris*, because William Nevill had issue by his wife, and the wording of the Warwick patent of 28 Hen. VI suggests that if he were summoned in right of his wife, it would only be after issue was born, when he would be tenant by the curtesy.

<sup>2</sup> See the passage from the 3<sup>rd</sup> *Report on the Dignity of a Peer* (p. 47) cited by Lord Robert Cecil in the Earl of Norfolk case:—"it has long been decided that no husband can be tenant by the curtesy of a dignity vested in his wife and the heirs of her body; and it may be doubted whether such tenancy by the curtesy of a dignity was ever allowed as a right."

and the *status* of the dignity affected to an extent difficult to determine.

Whether the absence of formal Judgments, together with these notable changes, points to some difference of opinion one must not even speculate : one can only note the facts.

Now what are the conclusions which emerge from the Fauconberg and the Darcy Resolutions as reported together to the House ? Firstly, the importance attached to the first proof of sitting, and the reluctance to date the creation of a barony earlier than the first sitting. This had clearly been the principle adopted in the Hastings case (1841), when, contrary to precedent, the barony was dated only from the sitting of 1290, not from the writ of 1264. In the Mowbray and Segrave case (1877) the law—which is “always the same”—once more fluctuated : the “sitting” of Nicholas de Segrave in 1290 was “referred” to his writ of 1283 ; and that of Roger de Mowbray’s son was similarly referred to his father’s writ of 1283. In the Wahull case (1892) the pendulum swung back with violence, and the whole principle of referring was vigorously denied. In the Fauconberg and Darcy case (1903), I do not hesitate to say, the Resolutions, as actually reported to the House, were at absolute variance with one another. If the motion of the Lord Chancellor had been adopted as it stood, the result would have been wholly consistent, and a sitting would not have been referred to an earlier writ of summons than that under which it took place. But what, as they stand, are the facts ?



The proof of sitting admitted for Fauconberg was that of 14 Hen. VI, for William Nevill, who then sat as Lord Fauconberg, but had been summoned as early as 7 Hen. VI (as William 'de Nevill' simply). The proof of sitting admitted for Darcy was that of 18 Edw. III, for John Darcy, who had been summoned as early as 6 Edw. III. Had the terms of the Chancellor's motion been adhered to in the Resolutions, both dignities would have been, consistently, dated from the first sitting, —Fauconberg from 14 Hen. VI, and Darcy from 18 Edw. III. Instead of this, their Lordships followed, for Fauconberg, the Segrave precedent, admitting a writ of summons, years earlier than the sitting, and, for Darcy, apparently, the Hastings precedent, rejecting a writ of summons years earlier than the sitting! What, in view of these facts, are the dates we should assign to these dignities? *Quien sabe?*

"Burke" knows, of course. People who accept the "authority" of that work may be interested to learn that it assigns to Fauconberg as the date of its creation, *not* the date claimed (1283), *not* the date allowed (7 Henry VI), but 1295! As it duly mentions the writ of 1283, we must infer that the editor, in his wisdom, rejects that writ as invalid, before explaining to his readers, under Mowbray and Segrave, that it is the earliest valid writ, and that these dignities date accordingly from 1283. As to Darcy, he assigns to it, as date of creation, "27 Jan. 1331-2," the date claimed, but not allowed. But can we wonder that a peerage editor should be thus hopelessly bewildered, when he is

called upon to choose from a whole jangle of Judgments?

I ventured to say above that the House had "rightly disallowed" the earlier precedence claimed for the barony of Fauconberg. This conclusion is firmly based on the evidence of parallel dignities. I would place side by side four cases, all of them belonging to the reign of Henry VI. John Bouchier, who married the heiress of the Berners family, was summoned to Parliament as John 'Bouchier de Berners' (also as 'Dominus Berners' and 'Johannes Berners'). William Nevill, who married the heiress of the Fauconbergs, was summoned as "Willelmus Nevill" (but later as "Willelmus Nevill de Fauconberg," and he is entered as "Le Sire de Fauconberge"). William Bouchier, who married the heiress of the Fitzwarines, was summoned as William "Bouchier, dominus de Fitz Waryn." Robert Hungerford, who married the heiress of the Moleyns family, was summoned as Robert "Hungerford, dominus de Moleyns." The Berners family could shew neither writ nor sitting; the Moleyns family could shew a single and invalid writ, and no sitting; the Fauconbergs and the Fitzwarines alike could show valid summonses but no proved sitting.

Now Proposition XII of the Fauconberg printed case is—

that William Nevill was summoned to Parliament, that he sat in Parliament *in right of his wife* as Lord Fauconberg, and that he was allowed and bore the title of Lord Fauconberg.

What is the *proof* of the assertion which I have

here italicised? Absolutely none. It is a mere inference from the fact that he was occasionally allowed the style of "Sire de Fauconberge" or "Dominus de Fauconberge." If that inference is sound, it must also be sound in the other three cases; for the style is similarly allowed in all three. But it is not sound in the case of Berners, for no peerage dignity was or could be vested in the heiress of the Berners family; it is not sound in the case of Fitzwarine, for the precedence enjoyed by that barony, under Henry VIII, was only that which would be conferred by the summons of Henry VI;<sup>1</sup> and it was not sound in the case of De Moleyns, for there was no barony vested in the heiress, and the House of Lords, in 1870, dated the creation only from the days of Henry VI. Therefore the style of Fauconberg borne by William Nevill is no proof that he sat in Parliament "in right of his wife;" and yet it is the sole 'proof' vouchsafed.

Under Proposition XIII of the same Case, namely that "no new peerage was created" in such cases, it is somewhat astonishing to read that

The doctrine that a husband could, and, in those days, did usually sit in and enjoy the Peerage Honours vested in his wife has never been disputed, and in recent years has been admitted in the case of the Barony of De Moleyns (1870), in which case, moreover, the sitting in Parliament which was put forward as technical "proof" of the existence of the Peerage, was in the person of Robert Hungerford, the husband of Alianora, *de iure* Baroness de Moleyns.

This allegation, happily, was verified for the

<sup>1</sup> This applies also to Berners (see below).

Crown, when it was found that nothing of the kind was "admitted" on that occasion. And though the sitting of Robert Hungerford was, no doubt, "put forward" to prove the existence of a Peerage dignity in his wife's family, it was emphatically not accepted for that purpose. This was well brought out by the Attorney General<sup>1</sup> in 1903. "I do not think," he observed of the above allegation, "the statement is accurate." He then showed that counsel had endeavoured in the De Moleyns case, precisely as was done in the Fauconberg case, to use the sitting of Robert Hungerford as "referable" to the writ issued to his wife's ancestor, and so to prove a Peerage for the latter. But Lord Redesdale, sitting as Chairman, would not have it, and interpolated (of the Henry VI sitting) "That would be held to be a new creation." Accordingly, the Attorney General continued, the Resolution of 1871 ran :—

"That Robert Hungerford was first summoned to Parliament as Lord De Moleyns by Writ dated the 13th January in the twenty-third year of King Henry the Sixth (1445) and was present in Parliament as Lord de Moleyns on the 12th day of February in the twenty-seventh year of the said King."

This Resolution, it will be seen, was closely followed in the Fauconberg case, but with the unfortunate addition of the words "in right of his wife Joan." Though this addition is part of what the Resolution states to be "proved," I repeat that it is devoid of proof, and that there was produced no evidence of the fact. The Attorney

<sup>1</sup> Sir Robert Finlay.

General had put this quite clearly to their Lordships :—

I submit to your Lordships that there is nothing in all this to show that he sat *jure uxoris*..... it cannot be relied upon as a sitting constituting a summons in right of his wife, so as to lend any validity to the Peerage which is said to have vested in his wife.<sup>1</sup>

He was here interrupted by the Lord Chancellor with the strange question :—“ You do not deny, historically, that they did sit in right of their wives, do you ? ” It is not a question of whether “ they ” (whoever “ they ” may be) did so, but of whether William Nevill can be proved to have done so. And this, as I have shown, he cannot. The Attorney General, unfortunately, only hastened to agree to the above general proposition, but Lord Davey, by a question, recalled the need of proof :—“ Is the Writ expressed to be to him *jure uxoris* ? ”

The Resolution, as it stands, stultifies itself. For it carefully abstains from recognising either writ or sitting in any of the Fauconberg family (which is what their Lordships were expressly asked to recognise), and consequently does not recognise them as peers. For, as Lord Redesdale expressed it, in the parallel case of De Moleyns :—

You do not prove any sitting under the original creation..... Unless there is a sitting as well as a summons, we never have held it to be a creation of a barony.

And yet the same Resolution states that the barony was vested in the husband of their heiress “ in right of his wife ” !

<sup>1</sup> *Minutes*, p. 206.

<sup>2</sup> Of course no writ would be so expressed.

As yet I have only denied that William Nevill can be proved to have sat "in right of his wife." I shall now go further and show that such a summons as his was treated by the House itself as a new creation.<sup>1</sup>

Of the four cases we have kept in view, two, Berners and Fitz-Warine, can be definitely put to the proof; for their holders actually sat as such under Henry VIII, when it becomes possible to ascertain precedence. And in 1512 the order of precedence was this :—

Dominus Latymer (First writ 25 Feb. 1431/2)

Dominus Stourton (Patent 13 May 1448)

*Dominus Fyz Waren* (First writ 2 Jan. 1448/9)

*Dominus Berners* (Ditto 26 May 1455)

Dominus Hastynges (Ditto 26 July 1461)

This, it will be seen, is decisive. Fitz-Warine and Berners are both ranked as new creations in the persons of the husbands of the heiresses. No older precedence is allowed them. We thus simply knock to pieces Proposition XIII in the Fauconberg Printed Case :—

when the husband of a peeress in her own right was summoned to Parliament by the title and designation of the Peerage vested in his wife, he actually sat in and

<sup>1</sup> The solitary case adduced as proof of Proposition XIII is that of the Barony of Dacre. But this stands on a different footing from the four cases with which I deal. (1) The original Dacre line had a *proof of sitting* as well as summons, so that the House would recognise without question that a barony was vested in them and their heiress: Fauconberg has no such proof. (2) The last of the original line had been summoned so late as 1455, and the husband of the heiress was recognised as Lord Dacre in 1458 and summoned in 1459: in the Fauconberg case there was an interval of nearly *seventy years* between the last summons to the old line and the first to William Nevill, no Fauconberg having been summoned since 1362. (3) The precedence of the Dacre heiress' husband was specially established by Edward IV's award in 1473.

enjoyed the same Peerage which (*sic*) was vested in his wife, and that no new Peerage was created.

For the cases of Fauconberg and Fitz-Warine are similar in all respects. In both cases the earliest writ is that of 1283; in both it is followed by valid summonses to the great Parliament of 1295 and others afterwards; and in both there is no proof of sitting, till the line ended in an heiress, save the Barons' letter to the Pope, which has not been accepted by the house. In both cases the father of the heiress was never summoned to Parliament;<sup>1</sup> and in both cases the husband of that heiress was summoned to and sat in Parliament in the reign of Henry VI, and bore her surname as his style. In the Fitzwarine case the precedence of his barony can be tested, and we find that the House allowed it only as from his first summons. Therefore the precedence of the Fauconberg barony is only that which is similarly given by the first summons of William Nevill in the reign of Henry VI.<sup>2</sup> And from this conclusion there is no escape.<sup>3</sup>

If I have somewhat laboured the point, it is

<sup>1</sup> In the Fauconberg case there were 40 years during which he might have been summoned, but was not. In the Fitzwarine case he died under age.

Mr. Asquith, who is too fond of assertion, informed the Committee at the close of his argument that in the Fauconberg case we find "regular writs of summons directed to *every successive holder* of the title" (*Minutes*, p. 214). And what meaning, moreover, if any, has the phrase, "holder of the title?"

<sup>2</sup> And even this precedence is only right if their Lordships "referred" the sitting of 14 Hen. VI to the summons of 7 Hen. VI, as I have assumed.

<sup>3</sup> Under Proposition XIII in the Fauconberg Printed Case we read that "though there can be no doubt that William Nevill, Lord Fauconberg, sat in and enjoyed the ancient Barony of Fauconberg vested in his wife," yet (it is cautiously added) "a denial of the contention does not materially alter the position of the Petitioners, as they would still be entitled to a barony under William Nevill's summons and sitting" (as indeed was duly found). "Consequently, the only point at issue, and the point on account of which all the proofs up to the present have been produced, is the question of the proper place and precedence of the Barony of Fauconberg upon the Roll of Barons."

because the matter is not merely of academic interest. A claim to the barony of Fitz-Warine (or rather of coheirship thereto) may be made at any moment, and all the questions in the Fauconberg case will then be raised anew. When this happens, we may hope to learn how a barony can be "vested in" a man "in right of his wife," when there was no recognised barony to which she could have succeeded.

Again, these questions will be raised anew if the barony of Furnival should be claimed. There also the first writ is that of 11 Edw. I (1283), and there also, though summonses are on record to four of the family in succession (1283-1383), the only proof of sitting, it would seem, that can be found is the Barons' letter to the Pope, which, as we have seen, cannot be accepted;<sup>1</sup> but the heiress of the last Furnival summoned married (as in the Fauconberg case<sup>2</sup>) a Nevill, who was summoned as Thomas "Nevill de Halumshire," and of whose sitting as 'le Sire de Furnival' there is proof. In this case, therefore, also we might learn if the heiress of a non-existent barony could transmit that barony to her husband.

And there is one point more. In strange contrast with the Fauconberg Resolution, that which dealt with the Barony of Darcy ignored writs absolutely and relied on a sitting alone.

That it is proved by the Parliament Roll of 18th Edward III and the other evidence adduced on behalf of

<sup>1</sup> See p. 262 above, and p. 276 below.

<sup>2</sup> Oddly enough, she also was named Joan.



the Petitioners that John Darcy sat in Parliament in right of that Barony in that year.

Let us see then what is the proof, the only proof relied on for the fact that the Barony was created. It is printed in the 'Minutes of Evidence' (p. 66) and is claimed in the Printed Case (p. 17) as proof "that John, first Lord Darcy, was present and sat in Parliament as a Peer of the Realm." On account of the importance assigned to it I give it here in full.

It'm fait aremembrer q' la dit Co' e prierent a n're S'. le Roi etc..... A quele priere n're dit S'. le Roi octroia et si fu la dite patente faite 't assentuz en p'sence 't p(er) avis de les prelat' 't grantz souzescritz cest assav' lercevesq(ue) de Cantirbirs levesques de Cicestr' de Loundres 't Dely les Counts de Norht' 't de Suff(olk) le Seign' de Wake Mons' Rob(er)t de Sadyngton Chancell' S'. William de Edyngton' Tresorer Mons' *Johan Darcy Chaumb(er)leyn* Mestre Johan de Ufford gardeyn du prive seal nostre S'. le Roi Mons' William Scot' Mons' Johan de Stonore Mons' William de Shareshull Mons' Rog' Hillary Mons' Richard de Wylughby Mons' William Basset Mons' Richard de Kellehull Mestre Johan de Thoresby et S'. Johan de Seint Poul.

One has only to read this document to see that it cannot possibly be proof "that John, first Lord Darcy was present and sat in Parliament as a Peer of the Realm." For who were those with whom we find him here grouped? The list may be analysed as follows :—

- (A) Four 'prelates' :—Canterbury, Chichester, London, and Ely.
- (B) Three lay peers :—the "Counts" of Northampton and of Suffolk and the "*Seigneur de Wake*."

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- (c) Four officials :—The Chancellor, the Treasurer, the Chamberlain' ("Monsieur" John Darcy), and the Keeper of the Privy Seal.
- (d) Four judges who had been separately summoned to this Parliament.<sup>1</sup>
- (e) Five other eminent legal officials, who had not been so summoned.

When counsel attempted, in the Hastings case, to put in "the Barons' letter" as proof of sitting, we learn from the Report that

The Counsel were informed "that it did not appear that this was an act which the individual could have done only as a Peer."<sup>2</sup>

It is obvious that precisely the same objection applies to the above record. Nine judges, the majority of whom had not even been summoned to attend, as such, the Parliament, are named among its "grantz" as well as John Darcy. He is entered only as an official; and if it proves his sitting as a peer, it proves theirs also;—"which is absurd." But, it may be urged, he had been summoned to this Parliament as a baron, and they had not. On the contrary, John Darcy *was not even summoned to this Parliament*.<sup>3</sup> The following brief dialogue did indeed take place.

*The Lord Chancellor.* "He was present and sat in Parliament, did he?"

*Mr. Asquith.* "There is no question that he was summoned in the eighteenth year of Edward III, and he was present. In the Parliament Roll amongst those

<sup>1</sup> The Chief Justices of the King's Bench and the Common Pleas and the Chief Baron of the Exchequer with a former Chief Justice.

<sup>2</sup> *Fauconberg etc. Minutes*, p. 178.

<sup>3</sup> See *Lords' Reports* IV, 552, for summons of 18 Edw. III.

persons appears the name of John Darcy, chamberlain..... You have got both the writ and the sitting in the case of the first lord." <sup>1</sup>

This, however, is only Mr. Asquith's little way. Bold assertion is one thing : proof is quite another. <sup>2</sup>

But as yet I have only shown that the document in question is not technically valid as proof of sitting. I will now go further. If any of these great, these learned lawyers had known their constitutional history or had deigned to consult someone who did, they would have discovered that this document which they fondly imagined to constitute proof of sitting in Parliament, was, on the contrary, proof only of presence in *the King's Council*. It records a plenary meeting of the council for the ratification by the King of the measures passed in Parliament as statutes by his "patente."

Take the names. I have examined the original Charter Roll of 18 Edward III <sup>3</sup> in order to ascertain the names of that small permanent body by whom his charters were witnessed. This body was unaffected by the Parliament of that year ; <sup>4</sup> before, during, and after its meeting, the same names recur. The three prelates, Canterbury, London, Chichester,—of whom Canterbury and Chichester were brothers, <sup>5</sup> and London a relative

<sup>1</sup> *Minutes*, p. 183.

<sup>2</sup> Compare pp. 161-5 above.

<sup>3</sup> 25 Jan. 1343/4 — 24 Jan. 1344/5.

<sup>4</sup> 7-28 June, 1344.

<sup>5</sup> "Since 1330 he [Edward III] had depended chiefly on the two Stratfords, John... archbishop of Canterbury, and Robert his brother... bishop of Chichester. The brothers had held the great seal alternately... John Stratford... as archbishop, chancellor, and president of the Royal council, was supreme in the treasury as well as in the chancery" (Stubbs, *Const. Hist.* II, 384).

—head the list again and again.<sup>1</sup> Of the lay peers the earl of Northampton, who was a cousin of the King, occurs regularly as the first witness,<sup>2</sup> and the earl of Suffolk, a great noble, attests with him.<sup>3</sup> The third lay peer, the ‘Seigneur de Wake,’ is the baron whose name similarly appears on the permanent body of “grantz.” A son-in-law of Henry, earl of Lancaster, and a brother-in-law of the King’s uncle, he attests, as “Thoma Wake de Lydel,” charters of 10 June, 18 June, 1 July, 19 August, 23 August, 23 October, and 26 December. It is particularly interesting to find that a charter of 1 July, just after the close of parliament (28 June), has the same first nine witnesses (with the sole exception of the bishop of Ely) as our own undated document.

It has now been shown that this document records a meeting of that permanent council of which Stubbs wrote that

from the accession of Henry III a council comes into prominence which seems to contain the officers of state and of the household, the whole judicial staff, a number of bishops and barons, and other members who in default of any other official qualification are simply counsellors; these formed a permanent, continual or resident council etc. etc.... the distinguishing feature of which was its permanent employment in the business of the court.<sup>4</sup>

there was a permanent council attendant on the King, and advising him in all his sovereign acts, composed of

<sup>1</sup> *e.g.* in charters of 23 April, 1 June, 10 June, 16 June, 1 July, 2 July, 11 July, 19 August, 23 October, and 12 Jan. (1344/5). London is absent in one of 23 August, and Ely takes his place in one of 18 June. Chichester is absent in one of 26 December.

<sup>2</sup> *e.g.* in charters of 23 April, 1 June, 10 June, 16 June, 18 June, 1 July, 2 July 11 July, 23 October, 26 December.

<sup>3</sup> *e.g.* charters of 23 April, 1 June, 1 July, 26 December.

<sup>4</sup> *Const. Hist.* II, 256.

bishops, barons, judges and others, all sworn as counselors<sup>1</sup>

a council by whose advice they [i.e. the kings] acted, judged, legislated and taxed when they could, and the abuse of which was not yet prevented by any constitutional check. The opposition between the royal and the national councils, between the Privy Council and the parliament, is an important element in later national history<sup>2</sup>

Under a king with the strong legal instincts of Edward I, surrounded by a council of lawyers,... the practice and study of the law bid fair for a great constitutional position.... The action of the Privy Council, which to some extent played the part of a private parliament, was always repulsive to the English mind ; had it been a mere council of lawyers the result might have been still more calamitous than it was.<sup>3</sup>

The named witnesses to the King's charters in 1344 regularly end with the steward of the household, and when, in 1340, John Darcy himself occupied that position, he is similarly found on the roll as the last named witness.<sup>4</sup> It was again *ex officio*, as an officer of the King's household, that he is named, as we have seen, in the document entered on the Parliament Roll of 1344 (18 Ed. III).

As the Lord Chancellor in 'Iolanthe' solved a distracting problem by boldly inserting the word "not,"<sup>5</sup> we may, I would suggest, with similar addition, retain the wording of the Darcy Resolution of 1903. It will then run :—

<sup>1</sup> *Ibid.* II, 260.

<sup>2</sup> *Ibid.* II, 240.

<sup>3</sup> II, 189, 191. The historian adds that "the dislike of having practising lawyers in parliament appears as early as the reign of Edward III."

<sup>4</sup> Llanthony charter of 10 April 1340, put in among the evidence in the Lord Great Chamberlainship and Barony of Lucas cases. The other witnesses are three prelates, three earls, the treasurer, and one baron, Henry de Ferrars (of Groby).

<sup>5</sup> in the rule : "every fairy who shall marry a mortal."

That it is *not* proved by the Parliament Roll of 18th Edward III and the other evidence adduced on behalf of the Petitioners that John Darcy sat in Parliament in right of that barony in that year.

And, for Mr. Asquith's benefit, there might have been added a Resolution :—

That it is proved by the Close Roll of 18 Edward III that John Darcy was not among those summoned to Parliament in that year.

The importance attached by their Lordships to John's alleged sitting is manifest from this passage :—

*Lord Davey* : " The only sitting as a Lord Darcy that you have is the first one, of 18th Edward III. It afterwards got merged in the Conyers ? "

*Mr. Asquith* : " Yes "..... " in all these summonses to Parliament of the fourth, fifth, and sixth Lords Darcy, they are summoned as Lords Darcy simply. "

*Lord Davey* : " But, as I understand, there is no proof that they sat. "

*Mr. Asquith* : " I do not know that we have any actual proof that they sat, because we have got an ancestor who sat, <sup>1</sup> and it is not material to bring evidence of their actual sitting. "

*Lord Davey* : " You have only got one ancestor of whom you have got evidence that he sat ? <sup>1</sup> "

*Mr. Asquith* : " That may be, but the moment we have shown that an ancestor sat <sup>1</sup> we do not require any further evidence, " etc., etc. <sup>2</sup>

But how is that ancestor shown to have sat ? By a record which even an historian can see shows nothing of the kind. He remembers that a peer-

<sup>1</sup> i.e. in 18 Edward III.

<sup>2</sup> *Minutes*, p. 184.

age was here at stake ; and he learns with wonder what great lawyers consider to be evidence, imagine to be proof.

In the sacred mysteries he has no voice ; for their Lordships can only listen to counsel learned in the law. It may be that, even when enlightened as to the true nature of the record upon which the Resolution of the House on the Darcy creation rests, they may treat the matter as of no account, a mere layman's fancy. Or, again, it may be that enquiry will be made as to the origin of the statement to the House that this was a proof of sitting. It is understood that in peerage cases there rests upon the counsel employed a peculiar responsibility for the evidence they bring before the House. But in spite of the extreme confidence of Mr. Asquith's unfortunate assertions, his own responsibility in the matter, doubtless, is but technical. Contrary to custom, as explained above, he did not sign his clients' Case, that strange and garrulous production upon which I have had to comment.<sup>1</sup> On those who prepared that case and on its anonymous draftsman there rests the moral responsibility for this and for its other statements. Of that draftsman's idea of accuracy one may judge from his informing the House (p. 22) that "your Lordships' House has definitely decided that such<sup>2</sup> shall not be recognised (*vide* Resolution, 1641, in Fitzwalter case)." As everyone knows,<sup>3</sup>

<sup>1</sup> See pp. 193, 197-8, 200, 201, 236, 269-70.

<sup>2</sup> *i.e.* Baronies by tenure.

<sup>3</sup> 'Collins' pp. 286-8. *Reports on the dignity of a Peer* ; 1st Report p. 446 ; 3rd Report, p. 73. Cruise, *op. cit.* p. 66. Courthope, *Historic Peerage* pp. xxii, 200. *Complete Peerage*, III, 373. Pike, *op. cit.* p. 130. Palmer, *op. cit.* p. 182.

the Fitzwalter case was decided, not by their Lordships' House, but by the King in Council, and not in 1641, but in 1670.<sup>1</sup> It is precisely because barony by tenure had *not* been the subject of any Resolution of their Lordships' House that it was possible to claim the barony of Berkeley as a barony by tenure in the last century. Indeed, it was expressly urged that a mere decision by the Council was in no way binding on the House of Lords. And lastly, what the Council really held was, not that barony by tenure "shall not be recognized" but that it was "not fit to be revived." So the statement is a tissue of blunders from beginning to end.

And yet it is this hopeless blunderer who takes upon himself to charge an eminent legal commentator with "an utterly wrong and absurd deduction," "a mere travesty upon the law" (p. 22.)

That a writer who can speak of an Order in Council of the days of Charles the Second as a Resolution by the House of Lords in those of Charles the First, should imagine a record of the King's Council to be a proof of sitting in the House of Lords (1344) is not perhaps surprising; but that the House should accept his error and enshrine it in a formal Resolution is, surely, a lamentable thing. We may rank that Resolution with those which, a quarter of a century before, were similarly based on the strange 'proofs' that the Crown had determined the abeyance of the baronies of Mowbray and of Segrave.<sup>2</sup>

<sup>1</sup> *i.e.* 19 Jan. 1669-70.

<sup>2</sup> See my *Studies in Peerage and Family History*. pp. 456-7. Even so far back as 1668 the fact (so strangely ignored in 1877) that titles of baronies were assumed and recognised in error was known and was urged in argument before the House.



But of what account is a mere historian? His criticism is nothing worth, for it rests only upon fact. The lawyer's ways are not as his: they dwell in realms apart. Let him bow before the majesty of the law, grey with its hoarded wisdom, nor seek to break the spell of that august dominion. He who knows what history is may leave its lore in peace. It is time that he should pass from that darkened world, haunted by the ghosts of dead errors, and, through the ivory gate, emerge into the light of day.

## TALES OF THE CONQUEST.

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*The Sackville story—Its probable truth—The Mordaunt charter—The Burdet Charter—Sir ‘ Payan ’ D’Auney—The Dawnay crusader—His ‘ medal ’ and crest—The Umfreville charter—The ‘ William the Bastard ’ charter—The Saltmarshes imposture—The Sharnburn story—The Ashburnham hero—The Dover pageant—Mischiefs of pageants—The Colchester pageant—The Stourton hero—Mr. Shobbington’s exploits—The Pilkington and Trafford story—Two Scottish stories—The Kynnersley story—De Warenne’s rusty sword—‘ Exeunt omnes ’.*

In this paper I propose to glance at some of the tales, legends, or traditions concerning the Norman Conquest associated by certain families with their ancestors at that period. By dealing with such tales in groups one can form a better idea of their nature and their probability than by studying any single specimen in isolation.

It must not be supposed that the historian or genealogist of the modern school is intent only on destruction and that his sole aim is to prove such stories false. Such, no doubt, is the gist of the complaint made by the editor of ‘ Burke’s Peerage ’<sup>1</sup> but, to prove how mistaken that idea is, I shall give as my first example a story, hitherto, it seems, unknown, which appears to me to be of great interest and, in the main, probably true.

<sup>1</sup> In the 1909 edition.

A small piece of parchment preserved in the British Museum records a claim to certain liberties on the part of B[artholomew] de Sackville, who held of the Marshals, Earls of Pembroke in the days of Henry III a knight's fee at Fawley, Bucks.<sup>1</sup> Beginning with the words "Ostendit Domino suo dominus B. de Saukeville," he tells his story thus :—

"Comes Giffardus antecessor domini marescalli veniens ad perquisitionem Anglie tradidit totam terram suam de Normannia custodiendam cuidam senescallo suo qui vocabatur Esbrandus, qui eam egregie custodivit et constabularium de Archis<sup>2</sup> et alios exigentes indebitas consuetudines de terris domini sui cepit et detinuit. Perquisita autem Anglia, data fuerunt domino Comiti Giffardo omnia maneria quæ fuerunt Elvive la Wode, inter quæ fuit manerium de Fall', et dominus comes Giffardus statim mandavit senescallum suum de Normannia ut custodiret omnes terras suas in Anglia et eas disponeret quia vir prudens erat et fidelis. Qui statim, audito mandato domini sui, advolavit in Angl[iam] et veniens ad dominum suum nunciavit ei quæ fecerat. Dominus autem ejus fecit eum senescallum de omnibus terris quas perquisierat et in primis dedit ei pro servicio suo et probitate electionem duorum maneriorum suorum, scilicet de Crenend[ona] aut Fall' et ipse elegit Fall' pro pulchritudine loci. Et dominus Comes ei concessit cum omnibus pertinen[tiis] et libertatibus sicut ipse tenuerat. Qui posedit (*sic*) et habuit per totam vitam suam cum visu franci plegii et omnibus aliis libertatibus. Mortuo autem Esbrando successit ei Jordanus filius suus et heres, qui in pace tenuit, sicut pater ejus fecerat, per totam vitam suam, sed non multum vixit. Mortuo autem Jordano successit ei filius ejus et heres, Willelmus, qui similiter in

<sup>1</sup> *Testa de Nevill*, p. 247.

<sup>2</sup> The famous castle of Arques lay some miles to the E. N. E. of Sauqueville in another valley.

pace tenuit, cum omnibus libertatibus usque ad mortem Comitis Giffardi. Quo mortuo satellites regis ceperunt omnes terras quæ suæ fuerant in manu regis et feoda....et fecerunt omnes homines tam dominiorum quam villarum...sequi Com[itatus] et Hundreda usque ad illum tempus quo, deo disponente, domina Comitissa, mater (?) domini marescalli, data fuit illustri viro sancte memorie Willemo marescallo. Quo facto, reddita fuit ei libertas dominiorum suorum sed non feodorum extrinsecorum.... feoda extrinseca.... sequebantur Comitatus usque post guerram. Finita autem Gwerra, jussum fuit ut quilibet....vendicaret jura sua. Dominus vero.... W. marescallus h[oc] sciens... et suis injuste detineri impetravit a rege Johanne libertatem feodorum extrinsecorum et optinuit. Quo audito, dominus Jordanus de Sauk[avilla] impetravit a domino suo marescallo libertatem manerii de Fall' et optinuit. Post tres vel plures annos (?) <sup>1</sup>..... Falco de Breute per quandam falsam assisam abstulit domino comiti Willemo juniori libertatem suam feodorum illorum. Quam dominus rex ei restituit per perquisitionem Alani de la Hida .....eum injuste esse spoliatum, set dominus Jordanus de Saukavilla " etc.

Although this tale commences at so remote a period, its truth can be tested in places by the evidence of chronicles and of records. And, on the whole, it bears that test well. It is by no means easy, as a rule, to trace to their Norman homes the followers of William whom Domesday shows us in possession of English lands. Nevertheless it is possible to show that the Sackvilles and the great house of Giffard dwelt alike in the little valley of the sluggish and the winding Scie. Half-way between the port of Dieppe and Longueville, the home of the Giffards, the traveller to Paris

<sup>1</sup> MS. damaged here.

passes Sauqueville, which gave its name to the Sackvilles. Herbrand, its lord in the Conqueror's day, had a daughter Avicia, wife of Gulbert de Heugleville (lord of Heugleville-sur-Scie) and three sons, gallant knights,<sup>1</sup> Jordan, William, and Robert.

This Herbrand, clearly, is the 'Esbrandus' of our narrative, who, according to it, was given Fawley (*Fall'*) by Walter Giffard. Domesday duly shows us Fawley held of Walter Giffard by a Herbrand. But the narrative adds two statements of very singular interest. The first of these is that Walter obtained the lands of 'Elviva la Wode.' Now it is a singular fact that, in Buckinghamshire, Domesday shows us Walter Giffard succeeding at (Long) Crendon, his chief seat, and another manor *a son of* 'Alveva,' who is doubtless identical with his predecessor in some other places. The statement therefore, that Walter received the lands of Ælfgifu 'the crazy' ('la Wode') may be absolutely correct, though Domesday does not reckon Fawley itself among them. The other statement, namely that Herbrand selected the manor of Fawley, "on account of the beauty of the spot," in preference to the much larger and more valuable one of Crendon, is—though interesting as an early instance of the feeling for natural beauty—hardly in accordance with what we should expect of the typical Norman baron. He could hardly fail to feel that he had gained by leaving the meadows of the Scie for the banks of the stately Thames, but Crendon, if less

<sup>1</sup> "Aviciam Herbrandi de Salchevilla filiam..... Hæc tres fratres habebat præclaros milites : Jordanum et Guillelmum atque Robertum" *Ord. Vit.* (Ed. Société de l'histoire de France, III, 39, 45).

beautiful a spot, had a far more practical attraction.

That Herbrand was succeeded by a son Jordan, as alleged by the narrative, is confirmed, we have seen, by Ordericus and is also supported by the *Abingdon Cartulary* (II, 85), which shows us certain writs addressed by Henry I to Walter Giffard and to Jordan de Sackville concerning some land they had wrested from the abbey. In the next generation we are shown by our tale William succeeding to Fawley; and the return of Giffard's knights in 1166 duly records William "de Saukeville" as holding one fee, which was certainly Fawley.<sup>1</sup> It was doubtless his father who is referred to in Henry II's charter of confirmation to that great Giffard foundation, the Priory of Sainte Foy at Longueville, in 1155, in which he confirms the gifts of Jordan 'de Saukevilla' and 'the tithe of the land which Jordan de Saukevilla gave as a marriage-portion with his daughter'.<sup>2</sup>

Even before the year 1166 the death of Earl Walter Giffard, to whom it refers, had taken place (1164), and the King's officers, as it says, had taken over his great fief.<sup>3</sup> The next episode in the narrative is the marriage of "that illustrious man of sacred memory, William Marshal" to the Clare heiress who brought him these old lands of the Giffards in 1189. We know much of this brilliant marriage to "la bone, la bele, la sage, la corteise de haut parage" Isabel, and can even read how the happy pair spent the honeymoon at Stoke d'Abernon, "liu paisable, e aesie, e delitable," kindly

<sup>1</sup> *Liber Rubeus*, p. 312.

<sup>2</sup> See my *Calendar of documents preserved in France*, p. 77.

<sup>3</sup> See *Pipe Roll 11 Hen. II*, p. 25.

lent by Sir Enguerrand d'Abernon.<sup>1</sup> From that date there is no need to verify the story. It is interesting, however, to find that the Jordan de Sackville whom it names as obtaining from his lord the marshal the lost liberties of Fawley, stood high in his favour; for in 1207 he received from him the charge of a great portion of the Earl's Irish domains, while in 1210 he was one of the hostages exacted from the Earl by the King.<sup>2</sup>

Here then we have, so far as we can judge, a true tale of the Conquest and at least a true descent from a Conquest ancestor. That even at the time when it was written such a truthful story was a rare thing is seen when we examine the Conquest traditions of an even earlier period enshrined in the iurors' returns of 1212.<sup>3</sup>

Having thus begun with a story which seems to me to be true, I pass to a number of tales which belong to the realm of legend. On the one hand there are tales of the conquering race, of the men who were endowed with lands for their service to the Norman duke by charters which will not bear the test of critical examination, as in the cases of Umfreville, Mordaunt, and the Honour of Richmond. On the other are those told of the 'Saxons' who contrived to retain their lands, either by successful resistance to William, as in the cases of Stourton, Ashburnham, Kinnersley, and Bulstrode, or by peaceful arrangement, as in those of Sharnburn, Saltmarsh, Pilkington and Trafford.

<sup>1</sup> *Histoire de Guillaume le Maréchal* I, 344.

<sup>2</sup> *Histoire de Guillaume le Maréchal*.

<sup>3</sup> See for these returns my paper on 'The great Inquest of Service' in the *Commune of London and other Studies*.

One of the most daring and successful concoctions intended to provide an ancient house with a Conquest pedigree and a Conquest tale is the first charter of the Mordaunts.<sup>1</sup> This precious document was given to the world, in the days of Charles II, by Henry (Mordaunt), earl of Peterborough, under a fictitious name.<sup>2</sup> It runs as follows :

Eustachius de Sancto Egidio omnibus hominibus et amicis suis tam Francigenis quam Anglicis salutem. Sciatis me dedisse et hac presenti charta confirmasse Osberto dicto le Mordaunt, fratri meo, pro homagio et servitio suo, terram meam de Radwell, cum omnibus pertinentiis et libertatibus suis, sibi et hæredibus ejus, tenendum de me et hæredibus meis, libere et quiete, honorifice et hæreditarie, sicut illum (*sic*) ego inter alia recepi ac tenui de donatione et munificentia Willielmi illustrissimi Regis Angliæ, pro servitiis quæ pater meus in conquestu et ego sibi fecimus, per servitium dimidiæ partis feodi unius militis, pro omni servitio sæculari. Ego vero prædictus Eustachius de Sancto Egidio et hæredes mei prædictam terram prædicto Osberto et hæredibus ejus contra omnes homines ac feminas warran- tizabimus. His testibus Ranulpho filio Thomæ Hervei, etc.

Eustace de St. Gilles, it will be seen, is here alleged to grant to his brother Osbert 'le Mordaunt' the manor of Radwell, which had been given him by King William for the services of his father and himself "in the Conquest of England." Now we have only to turn to Domesday to learn that the whole of Radwell (Beds) is accounted for in that record, and that neither Eustace nor his brother are to be met with in that account. Yet, in spite of this and of the obvious anachronisms in the style

<sup>1</sup> The Mordaunts can be traced back to within about a century of Domesday.

<sup>2</sup> In that very rare work *Succinct Genealogies*, by 'Robert Halstead' (1685).



of the alleged charter, it was accepted as genuine without question even by the critical Brydges<sup>1</sup> in his edition of 'Collins' Peerage,' whence it passed, as a matter of course, into the pages of 'Burke.' In them the tale it tells is still repeated as fact.

That statements so definite and so easily disproved should be made the basis of an elaborate pedigree from the days of the Norman Conquest is a striking proof of the lengths to which a forger would go and affords a useful warning to the reader and introduction to the cases which follow. As I have elsewhere observed,<sup>2</sup> Lord Peterborough—

also produced a charter (which appears to be the best evidence for "Payn," the Conquest ancestor of the Dawneys) in which a Hugh Burdet was made to say that the Conqueror had given him Maidford in Northants. As "Hugh" appears in Domesday as only its under-tenant, Baker, the able historian of the county, pronounced the charter to be of special interest for the new light that it afforded :—

"A wide field is thus opened to conjecture as to the nature and extent of the enormous grants made by the Conqueror to the principal Domesday tenants-in-chief."

But a glance at the witnesses is enough to show that the Charter must have been concocted.

This concocted document begins :—

Hugo de (*sic*) Burdet etc.... Sciatis me dedisse Pagano de Alneto cum Emelina filia mea villam meam de Maydford tam liberam quam illam recepi, ex donatione domini mei Willelmi Regis, etc. etc.<sup>3</sup>

Although to this charter there is given the

<sup>1</sup> My text is taken from his work.

<sup>2</sup> Paper on 'The Companions of the Conqueror' in *Monthly Review*.

<sup>3</sup> *Op. cit.* p. 6.

somewhat mysterious heading : “ Inter fines de Reg. Ric. primo Pagano de Alneto Hugo de (*sic*) Burdet dedit villam de Maydford,” it is obvious that Hugh Burdet<sup>1</sup> cannot have given in 1189-1190 a manor which had been given him by William I or William II (i. e. between 1066 and 1100). Baker, as we have seen, took him to represent the ‘Hugh’ who held Maidford, *not* of the Conqueror, but of Hugh de Grentmesnil in 1086.<sup>2</sup>

It is however with Payn (*Paganus*), “ the Conquest ancestor of the Dawnays,” that I would here deal. I do so because, even as I write, there appears this apposite information in that fount of genealogical lore, the “Social and Personal” column.

Payan, the unusual name bestowed yesterday on the infant son of Captain and Mrs. Guy Dawnay at St. George’s Chapel, is one of those peculiar to an old family, and in which not unnaturally no small pride is taken. In this case it connects a baby of the twentieth century with a maurading baron of the eleventh century. In the train of William the Conqueror came one Payan d’Aunay, of Aunay Castle, in Normandy. Whether he was a bigger barbarian than his fellows, or had more brains or brawn, history does not tell, but he made himself secure in this island ; one descendant distinguished himself in the Crusades, and another at Crecy, and thereafter many others have fought nobly for England down to the present head of the family Viscount Downe, who has had a distinguished military career.....

Uncommon Christian names, peculiar to particular

<sup>1</sup> The ‘de’ before Burdet is impossible and would of itself stamp this charter as spurious.

<sup>2</sup> Baker’s *Northants*, I, 44. The pedigree there given shows that the Cornish Dawnays were unconnected with the lords of Maidford, though the ‘Emme-line’ of the charter may have been suggested by the name of the heiress of the former *temp.* Edward III.

families and derived from ancestors of fame, are not rare in the peerage. Perhaps the most interesting instance occurs in the Earl of Huntingdon's family ; his brother, the Hon. Aubrey Hastings, received at the font the names of Robin Hood.<sup>1</sup>

This information, as so often, is derived, to begin with, from 'Burke's Peerage.' In that 'authoritative' work we read that

Sir Payan d'Auneŷ of Auneŷ Castle, Normandy, came to England with the Conqueror (*Brydges' Collins*, VIII, 453).

But when we turn to the work here vouched as the authority, we discover, in the first place, that it cannot cite any authority for the fact, and in the second, that its version runs :—

Sir Paine (*sic*) Dawney of Dawney (*sic*) castle in Normandy..... came into England with King William the Conqueror.

Just as "Dawney castle" has been altered into the less improbable "Auneŷ castle," so the simple "Paine", which is found in an old edition of 'Burke,' is now metamorphosed into 'Payan.' On what authority ?

It is obvious that every family of Paine, Payne etc. must be descended from a fore-father who bore the Christian name assigned to that "marauding baron" who accompanied the Conqueror to England. They, at least, have a clear right to revive the Christian name of that forefather at the

<sup>1</sup> *Evening Standard and St. James' Gazette* 25 Sept. 1909. Even if the 'Robin Hood' of legend were descended from a Conquest "earl of Huntingdon"—a pedigree, wrote the Duchess of Cleveland, "which I should have thought it impossible for the most credulous mind to accept" (*Battle Abbey Roll*, II, 34)—this would not place him among the "ancestors" of the Hastings family, whose earldom of Huntingdon dates from 1529.

font. Whether the Dawnays have the same claim is, at least, more than doubtful.

This old Yorkshire house has a clear territorial pedigree of more than five centuries, a rare thing—it is needful to insist—at the present day. It claims descent from a younger son<sup>1</sup> of a house of the same name at the other end of England, the Cornish Dawnays, whose possessions extended into Somerset and Devon, and the last of whom fought at Crecy. The pedigree of that house in “Brydges’ Collins” begins only under Edward I, but can certainly be traced further back. The “marauding baron,” however, is not found in Domesday or, so far as I know, in any other record. As to the surname, it is, of course, French and implies Norman origin.<sup>2</sup>

And now as to the “descendant” who “distinguished himself in the Crusades”—a family distinction which is more usual in French than in English genealogy. Here again the authority is ‘Burke.’ According to that veracious ‘Peerage,’ he was—

Sir Nicholas Dawnay, who had summons to Parliament, 1st Edward III, among the Barons, but not afterwards, owing to his absence in the holy war against the infidels, whence he brought a very rich and curious medal.

This is taken bodily, we find, from “Brydges’ Collins,” where it is added that the medal is “now in the family’s possession,” and that Sir Nicholas

<sup>1</sup> But he is, in “Brydges’ Collins,” the eldest son.

<sup>2</sup> “Aunaie” means only alder-bed, but has given rise to place-names. In Normandy alone there are an Aunai (Orne) and Aulnay (Eure), and an Aunay or Aulnay (Calvados), at which last are the earthworks of an 11th cent. castle. The name was latinised as *Alnetum*, and the surname as *De Alneto*. There may well have been more than one family of the name.

remained "in the Holy Land many years." As the editor of 'Burke' improves his knowledge, he will some day discover that Nicholas cannot have gone crusading under Edward III, because 'the holy war' had ended with the fall of Acre in the days of Edward I. He will also learn that Nicholas was never summoned to parliament<sup>1</sup> in spite of the statement to that effect in "Burke's dormant..... and extinct peerages," where it is similarly added that "his lordship made a journey to the Holy Land."

Shirley, however, gives as the crusader—

Sir William Dawnay, who was in the Holy Land with Richard I, in 1192, at which time that king gave him, in memory of his acts of valour, a ring from his finger, which is still in possession of the family.<sup>2</sup>

This is also the version given in *The Battle Abbey Roll*<sup>3</sup> where we further read that "on the same occasion they received a grant of their crest, a demi-Saracen in armour, with a ring in the dexter hand and a lion's paw in the left." This is one of those impossible tales that are told of Richard's crusade, impossible because to those who have really studied heraldry these grants of arms, crests, augmentations, etc. are, at that time, wild anachronisms.

My own suggestion is that the real hero of the tale was a younger son, William Dawnay, who held the honourable post of Turcopolier of the English Langue at Rhodes, as a Knight of St. John,

<sup>1</sup> Even Banks had discovered this.

<sup>2</sup> *Noble and Gentle men.*

<sup>3</sup> By the late Duchess of Cleveland. The object is there stated to be "a somewhat massive ring, containing a talismanic gem" (I, 25),

from 1449 to 1468. It is easy to see how the Dawnay ring, like the Fitzwilliam scarf, needed a distinguished genesis, and how William Dawnay, who fought the Turks in the 15th century, was projected back into the 12th and made to fight them with distinction in Richard I's crusade. The crest has the appearance of a late grant embodying "the family tradition."<sup>1</sup> As an illustration of the worth of such tradition, the story of the ring presented by Richard *alias* the "curious medal" brought home by Sir Nicholas is well worth the telling by way of an interlude in our "tales."

As I am only dealing here with the Conquest period, I can but allude to the strange forgeries of twelfth century deeds—the work apparently of a Tudor scrivener—concocted to provide the Lamberts with an ancient and illustrious pedigree, and duly inspected and accepted three centuries ago, by all the Kings of Arms at once.<sup>2</sup>

The next charter of the Conquest with which I propose to deal is that by which William the Conqueror is said to have granted Redesdale to Robert Umfreville in 1076. This charter is known to us from the MSS. of Dodsworth in the Bodleian Library, to which they were bequeathed by Lord Fairfax, Dodsworth's patron. An eminent and meritorious antiquary of the days of Charles the First, Roger Dodsworth made his transcript from what he believed to be actually the original charter of the King. From this transcript it was accepted

<sup>1</sup> The 'lion's gamb' is suggestive of a further, but lost tradition.

<sup>2</sup> See my paper, "The tale of a great forgery" in *The Ancestor*, III, 24.

without question by Dugdale,<sup>1</sup> and from it also the document was printed, in an English translation, so recently as 1908 in the *Essex Archaeological Transactions*.<sup>2</sup> Its form is amusing enough :—

William, by the Grace of God, King of England and Duke of Normandy : To all the people, as well French, English as Normans.<sup>3</sup> Greeting, know ye that we have granted to our beloved kinsman, Robert Umfreville, Knight, Lord of Tours and Vian, otherwise called Robert with the beard, the lordship vale and forest of Redesdale etc. etc..... which came into Our hands by Conquest, to have and to hold..... by the service of defending the same from enemies and wolves for ever with the sword which we had by Our side when we entered Northumberland, and further of our more abundant grace we have etc. etc..... In testimony whereof we have caused Our seal to be affixed to these letters.

Witnesses : Matilda, Our Consort, William and Henry Our Sons, this 10th of July in the tenth year of Our reign.

Although the use of the plural style and the dating clause with its regnal year prove alike the grossness of the forgery, the charter, as we have seen, was accepted without question.<sup>4</sup> The Umfrevilles are known to have held Redesdale, on the northern border, from an early date, with certain regalities, but the service due from them is entered in 1212 as that of defending the valley from marauders<sup>5</sup> not of attacking wolves, as the charter appears to imply, with the sword worn by William

<sup>1</sup> *Baronage*, I, 504.

<sup>2</sup> Vol. X, N.S., pp. 329-330.

<sup>3</sup> The Normans, in charters of this time, were included in the "French" (*Franci*).

<sup>4</sup> It is similarly accepted in the Duchess of Cleveland's *Battle Abbey Roll*.

<sup>5</sup> "per servitium custodiendi illam a latronibus" (*Liber Rubens*, p. 563)  
"per servitium ut custodiat vallem a latronibus" (*Testa de Nevill*, p. 392.)

the Conqueror when he had "entered Northumberland" years before the grant.

Lastly, there is the famous charter which professes to have been granted by the Conqueror, at the siege of York, to his 'nephew,' Alan, Count of Brittany. This charter also was accepted by Dugdale as genuine, and in Gale's *Honour of Richmond* we see the charter itself being handed by the Conqueror to Alan, the engraving being taken from the 15th cent. illumination in Cott. MS. Faust B. VII. Often printed as authentic,<sup>1</sup> its bearing was gravely discussed by Lechaudé d'Anisy in his *Recherches sur le Domesday Book* (I, 75) and again, a few years ago, in M. Dupont's *Recherches historiques et topographiques sur les compagnons de Guillaume le Conquérant* (p. 124). It is chiefly notable for its strange beginning,—“Ego Guillelmus cognonime Bastardus, rex Angliæ.” Mr. Freeman deemed it “palpably spurious,”<sup>2</sup> and with this opinion I concur.

The point I wish to impress upon the reader is that the apocryphal “tales of the Conquest” are not by any means confined to legend or “tradition,” but are confirmed at times by charters deliberately concocted for the purpose. There may, of course, be cases in which the anachronisms are explained by a genuine charter of later date having been claimed in error for the period of the Conquest. For instance, in ‘Burke's Landed Gentry’ the pedigree of Edgcumbe of Edgcumbe begins with the evidence of such a deed.

<sup>1</sup> e.g. in Selden's *Titles of Honour*.

<sup>2</sup> *Norman Conquest*, II, 609.



We are told that

The family of Edgcumbe has been settled in the parish of Milton Abbott, Devon, from a very early period, as appears both from a deed in Norman French (having the words 'de Eggecombe' and dated "in the 12th year of the Conquest ") etc. etc.

One would have supposed that even the editor of the " Landed Gentry " might have known that deeds of the Conquest period were neither written " in Norman French " or dated in this fashion. And yet, if the deed really belongs to the 14th, not the 11th century, and if it is dated in a given year of King Edward " the second (or third) after the Conquest," it may quite well be genuine.

We will now turn from the conquerors to the conquered and glance at some of the tales told of ' Saxon ' houses.

One of the most astonishing instances of an obviously forged Conquest document being cited without question is that of a charter which found its way into " Burke's Landed Gentry " at the head of the elaborate and lengthy pedigree of Saltmarshe of Saltmarshe. Its " opening " read as follows :

The following descents of this ancient house are derived from an old pedigree still in the possession of the family, as well as from entries in the Heralds' Visitations, MSS. in the British Museum, Hutchinson's Durham, Wills, court rolls, Post Mortem Inquisitions, and other public records. The family name was derived from the lordship of Saltmarshe in East Yorkshire, and in ancient days was spelt in several different ways, of which the most usual were Saltmerse (Domesday Book), Sautmareis, Saute Marays, and de Salso Marisco, the latter form being most common during the 12th and 13th centuries.

Learned and impressive enough this overture will sound. But we proceed.

SIR LIONEL DE SALTMERSE owned land at Saltmarshe in the time of KING HAROLD, was knighted by WILLIAM THE CONQUEROR 14 Nov. 1067, when he gave him under royal letters patent the lordship of Saltmerse in the presence of Thurkill, Earl of Warwick ; Peverill, Earl of Nottingham and Derby ; Simon Silvester, Earl of Leicester ; William Fitz Osborne, Earl of the Isle of Wight ; the said Lionel yielding (*sic*) himself, and giving a pair of mail gloves, at the monastery of Battle Abbey in Sussex, as appears from Domesday Book in the Exchequer. His son,

SIR LAMBERT DE SALTMERSE was knighted by William Rufus at the forest of Dean, 20 March, 1085.

It is comparatively a detail that William the Conqueror was not at Battle Abbey, but in Normandy at the date named. It is also a detail that nothing of this appears, as alleged, in Domesday Book, which proves on the contrary, that " Salt-emersc " (not " Saltmerse ") was still, in 1086, a ' berewite ' of Howden, the whole belonging, not to " Sir Lionel," but to the bishop of Durham. The really deadly thing is the test of names.

For Thurkill was not " earl of Warwick "; (William) ' Peverill,' though a great landowner in the counties of Nottingham and of Derby, was not earl of either shire ; and " Simon Silvester " is a wild shot, it would seem, for Simon de Senlis (*Silvanectis*), who was not an earl, and even if he had been, would not have been " earl of Leicester." *Quid plura ?* The document is a forgery, and the dates are fictions.

The very curious Sharnburn story<sup>1</sup> stands some-

<sup>1</sup> " *Historia familiæ de Sharnburn* " transcribed by Spelman and printed by Bishop Gibson in *Reliquiæ Spelmanniæ*, 1698, (pp. 189-200).

what apart, in respect not only of its sobriety, but also of the interest it would have for serious historians, could we accept it as authentic. It is specially exposed to the test which Christian names supply, and the result, when it is so tested, is distinctly satisfactory. Moreover, its tale of Edwyn's fate after the Norman Conquest is very much in accordance with what authentic history might lead us to expect. On the other hand, the fulness of the pedigree from the Conquest, which is a marked feature of the narrative, is a very suspicious feature, in view of the extreme difficulty of obtaining such information. Only an early family record of most exceptional character could supply such information. Moreover, one cannot but observe the fact that the narrative dates from the end of Elizabeth's or beginning of James the First's reign,<sup>1</sup> the most unfortunate period to which it could belong.

But let us see what the story is. Edwyn 'the Dane,' who had come into England with Canute, obtained Sharnburn and Snettisham in Norfolk, and held them till the Norman Conquest, when he was ejected by William de Albeny 'Pincerna' and William de Warrenne 'Forestarius.' He and others in like case thereupon complained to the Conqueror that they were peaceable men, who had never resisted him. On enquiring into the matter and being satisfied that the statement was true, the King ordered them to be reinstated and styled 'Drenges.' But Edwyn's two powerful oppressors would not restore his lands, and he had to content himself with a compromise. Nor did he finally obtain

<sup>1</sup> The latest date it mentions is 1602.

peace till he prudently married his son 'Asceur' to a natural daughter of the Conqueror.

The whole of this tale was duly accepted by Dugdale, whom it led into the serious error of making William d'Aubigny ("de Albini") come "first hither with William Duke of Normandy, at his Conquest of England"<sup>1</sup>. It was not till the reign of Henry I that William d'Aubigny settled in England, being provided by that King, of whose Norman supporters he was one, with a considerable fief in Norfolk<sup>2</sup>. His son was the first earl of Arundel (or Sussex). The evidence of Domesday Book is no less mercilessly destructive of the Sharnburn tale. The minuteness of its detail for the Conquest period points, Alas! to such deliberate concoction as that to which we owe the charters dealt with above.

The tales which follow seem to be supported by no alleged evidence, but to rest only on 'tradition.'

The Ashburnhams were resolved that their Conquest ancestor should die gallantly for his country at the hand of the Norman invader. As to the manner of his death they were indifferent enough. Thynne, the Elizabethan herald, held that

Bertram Ashburnham, a baron of Kent, was constable of Dover Castle A.D. 1066; which Bertram was beheaded by William the Conqueror, because he did so valiantly defend the same against the Duke of Normandy.

It was this version that aroused the scorn of Pro-

<sup>1</sup> *Baronage*, I, 118. He also made a serious error in beginning his pedigree of 'Albini of Cainho' with the statement that "Henry de Albini" was "without doubt" a younger son of "Nigel de Albini," brother of the above William (*ibid.*, p. 131). Henry was, on the contrary, the heir of quite another Nigel.

<sup>2</sup> *Red Book of the Exchequer*, p. 397.

fessor Freeman.<sup>1</sup> But the pedigree-maker was ready to serve up his 'Bertram' — as the cookery-books have it — "another way." The hero should fight and fall, in high command, with Harold.

Other accounts state that Bertram in the time of King Harold was warden of the Cinque Ports etc..... and being a person in great power at the landing of William the Conqueror, King Harold, who was then in the north, sent him a letter to raise all the forces under his command, to withstand the invader; and, when the king came up to oppose the Conqueror, the said Bertram, who had an eminent command in the battle, received so many wounds, that soon after he died thereof.<sup>2</sup>

One would have imagined that such an end was glorious enough for any ancestor; but a third and more elaborate version remains to amaze and delight us. In this version "the Baron of Ashburnham" combines with Stigand, the Primate, to wrest from the helpless Conqueror his confirmation of the liberties and ancient privileges of Kent.

In the peerage-writer's inimitable style, we are told that "the whole body of the nobility of Kent" with "the hearty approbation and consent of the inferior orders of the people" resolved to extort this concession.

William determined to visit that country, not only to gratify his curiosity, but also to smother the flames of rebellion that were ready to break out in it.

Thereupon the nobility and gentry

Having raised a considerable force, drew it together and advanced towards the King, whom they met and

<sup>1</sup> "Pedigrees and pedigree-makers" in *Cont. Rev.* Vol. xxx.

<sup>2</sup> Playfair's *Baronetage*.

surrounded at.... Swanscombe ; from which they would not suffer him to stir, till he had granted their demands and taken an oath etc..... nor were they satisfied with his oath, but obliged him also to give them hostages for their greater security.

The infuriated King, heedless of his oath and his hostages alike, repudiated all his concessions, and among the victims of his infamous vengeance

The Baron of Ashburnham had his head struck off near one of the gates of Canterbury, where he had lived much esteemed, and had been very active in the cause of liberty and his country..... The two sons of Bertram (Philip and Michael) lost their heads at the same time with their gallant father.<sup>1</sup>

Bertram, even at this early date, seems to have displayed the virtues of the typical Whig nobleman ; but why he should have lived at Canterbury, when his own seat was in Sussex,<sup>2</sup> is a problem hard to solve. It may, however, have been due to that family eccentricity which led this race of English patriots to bear such quaintly foreign names as Piers and Bertram, Philip and Michael. Michael is a name that had a fatal fascination for the pedigree maker who concocted "the great Carington imposture," but 'Lionel' and 'Leonard' also were names which tripped from his fellows' tongues.

Of that successful resistance to the Conqueror, under the leadership of Stigand and himself, Professor Freeman wrote :—

Everyone knows the legend..... about the Kentish men coming with boughs in their hands and wresting from

<sup>1</sup> See Playfair's *Baronetage* for all this.

<sup>2</sup> His grandfather, Piers, according to the pedigree, was lord of Ashburnham "some years before the Norman Conquest."

William a confirmation of their rights..... The tale describes the Kentishmen as led by Stigand, who was then undoubtedly in London.<sup>1</sup>

*The Dictionary of National Biography*, in its life of Stigand, tersely observes that "the story of his leading the men of Kent to meet William in arms and forcing him to confirm their privileges is a mere fable."

Mr. Louis Napoleon Parker knows better. In the Dover Pageant of 1908, which was widely advertised as the only one enjoying his management in that year, one of the greatest scenes was that of Stigand rallying the natives to resist the Norman invader and winning from William for Dover, to the joy of the 'Saxons', the proud motto 'Invicta.' What they did with it when they had got it, we were not told: perhaps they put it at the head of the borough rate demand notes.

Against such travesties of history I have ventured to raise my voice. If a pageant were frankly treated as a mere historical play, no harm might be done; but when it is represented as an educational influence and as actually teaching history, it may give fresh and vigorous life to long-exploded fiction. The historian finds it hard enough to keep such fiction at bay without its public and deliberate revival by means of 'historical' pageants. I am not speaking, of course, of so scholarly a production as the great Church Pageant, in which the public were enabled, by the labour of experts, to see the storied past live and move before its eyes.

But of the "Parker pageants," by the reader's

<sup>1</sup> *Norman Conquest* (2nd Ed.), III, 538.

indulgence, I would here say something ; for, apart from their influence on the great audiences on whom they must have left vivid impressions of history and archæology, they were no mere ephemeral productions. The publication of their texts in permanent form was announced last summer (1909).

Mr. Parker goes out of his way to inspire confidence in his accuracy by prefixing a note to the books of his pageants which assumes, in the case of Colchester, this form :—

Every incident in the Pageant is based either on local tradition or on authentic history ; and in many cases the characters repeat the actual words spoken by their prototypes. This is especially the case in Episode VI.

When we analyse this signed statement, we find that it amounts to claiming that every incident in Mr. Parker's pageant is based either on fact or on fiction, a claim which no one would dream of disputing, but which can hardly be said to advance our knowledge.

But as Swanscombe, the scene of the alleged meeting between the Conqueror and the men of Kent, lies in the north-west of the county, and Dover at its opposite extremity, it is clear that even "local tradition" cannot in this case be invoked as a plea for deliberately falsifying "authentic history."

For my part I declined to aid and abet Mr. Louis Napoleon Parker in making history ridiculous by connecting myself in any way with the Colchester Pageant of the following year (1909). The greatest stress was laid on its educational value ; special



provision was made for great audiences from schools, and even teachers were urged to attend and see the history of the town unfolded before their eyes. And the "book," to the uninitiated, appeared heavy with learning. Every episode was precisely dated; facts and names were thrust upon the public in almost pedantic detail; the lordships of "Eudo Dapifer" were recited from Domesday Book, and his style "Dapifer" explained; and even the charter of Richard I was read out by a mounted "herald" with explanations of 'scot and lot,' 'murdrum,' 'lastage,' 'passage' and 'pontage.' Well might an audience imagine that if such a pageant erred, it was in excess of erudition and zeal for historical truth.

Yet it is not easy in a short space to give adequate illustration of its wanton and grotesque errors. One may pass over the marriage of Helena, daughter of Coel King of Colchester, to Constantius Chlorus in '274,' though authentic history rejects the fact and local tradition assigns it to 264, a quite impossible date. One may also forgive the Osyth episode of '650,' though it was not only at variance with history, but substituted a mythical conversion of the folk for that which the famous bishop Cedd actually effected in Essex at this period.<sup>1</sup>

It is when we come to the marriage of Edward the Elder to 'Ecgywn,' a youthful shepherdess, in '921,' that in the growing light of history one calls a halt. Their son Æthelstan had actually been born some quarter of a century before the

<sup>1</sup> He was, as a priest, sent to Essex, at the request of Sigeberht, its King, in 653 to convert its people. The chapel of St. Peter's on the wall (Bradwell) is considered to owe its origin to him.

date here so precisely given ! And if Edward did marry the girl,<sup>1</sup> it was in his early youth, and not as "great King Edward ;" nor can the event be connected in any way with Colchester or its district, which was not included, when Æthelstan was born, in the realm of Edward's father, but was held by his enemies the Danes. "Local legend" is guiltless here ; it knows nothing of Ecgwyn, and it affords no excuse for this violence to history. By the very scene of the pageant there ran the wall of Colchester, that ancient wall which the Romans built, which the English stormed, as they routed the Danes, and which Edward visited and repaired, in 921. Here is the making, in the year named, of great and stirring pageant scenes, scenes that to those who saw them would teach real history. Instead of these Mr. Parker gives us the childish scene of Ecgwyn, a scene with which Colchester can have had nothing in the world to do, and to which he carefully assigns a perfectly impossible date.

For Episode III Mr. Parker enjoyed "the invaluable assistance of Mr. C. E. Benham," a local and ardent admirer of "the Master." With the usual affectation of accuracy "1157" was selected as the year in which "Thomas of Canterbury — Thomas Beckett" visited Colchester, accompanied by bishops whose names are given, including "Hilary of Chester" (*sic*) ; and Queen Eleanor asks the King how he can tolerate that "arrogant priest." The anxiety of the authors to be strictly historical doubtless made them oblivious of the fact that Thomas

<sup>1</sup> "Quedam concubina" she is styled by William of Malmesbury. The newly appointed bishop of Colchester alluded in his Pageant sermon to her "simple faith," which illustrates his own simple faith in Mr. Parker's history.

was not an archbishop, or even a priest, in 1157, but a highly secular person. He was, however, thoughtfully provided with first and second murderers (*vide* 'The babes in the wood') as "knights in attendance"! <sup>1</sup>

The Pageant now burgeons with facts, names, and dates. Hubert de St. Clare, who "gave his life for King Henry at Bridgnorth" (p. 32), is summoned by that King to his presence two years afterwards ('1157') and entrusted with Colchester castle. Sixty years after his death his daughter is shown in the Colne meadows addressed as "sweetheart" by her husband, — who, as we might naturally expect, was dead at the time. As his name, 'Lanvallei', with its Celtic prefix, proclaimed his house to be of Breton stock, it is grotesquely altered into 'Langvale' throughout in the text of Mr Parker's pageant. With her dead husband "Dame de Langvale" welcomes, in this nightmare of history, "Robert, Prior of the Crouched Friars," accompanied, strange to say, not by friars, but by "his monks" (*sic*). One would have imagined that Green's 'History' had made the date of "the coming of the friars" familiar even to a schoolboy, but they are here shown us years before any friar set foot in England and longer still, of course, before the coming of the 'Crouched' friars. And they are even confused with their foes, the monks. It is thus that a pageant may be made of educational value.

We must hurry on and can only glance at "All-egna, bishop of Llandaff" in attendance on "Queen

<sup>1</sup> In the list of characters two of the knights who murdered him in 1170 attend him in 1157!

Catherine of Arragon" in 1515, who is duly made, as a Spaniard, to speak broken English. The scrupulous accuracy of this will be realised when it is explained that the bishop of Llandaff, in 1515, was Miles Sawley, an Englishman. As for the Spaniard his name might as well have been given as "All-eluia;" it is as wantonly distorted as that of the local Abbot, who being named William "de Ard-le"<sup>1</sup> is, of course, transformed into "William de Airedale."

The crown, the *clou* of this wondrous pageant was the episode of the famous siege (1648). For this again "the invaluable assistance of Mr C. E. Benham" was secured, and a special point was made of minute historical accuracy. Accordingly, the royalist commander, George, earl of Norwich (so created four years before) is not only styled Lord Goring, but is even addressed as "Goring" by Sir Charles Lucas, the very man who would not have done so. This, no doubt, is one of the cases in which "the characters repeat the actual words spoken by their prototypes." Even at the very end of this, the closing episode of the pageant, there is the same affectation of accuracy. "Stephen Nettles, Rector of Lexden"<sup>2</sup> is introduced by name long after Mr Wyersdale had replaced him, and "Francis Marriage" is made the spokesman of the 'Company of Baymakers,' against the fine imposed on them, although the names of all those who had to pay are known, and neither among them nor in any of the records of 'the Dutch church' of Colchester is any

<sup>1</sup> From Ardleigh near Colchester.

<sup>2</sup> Within the liberties of Colchester.

Marriage to be found.<sup>1</sup> This, however, is as nothing when compared with the blunder, the grotesque and wanton blunder, on the Parliamentary Committee. The Royalists had brought as prisoners from Chelmsford the members of the County Committee for the Parliament and kept them while besieged in Colchester. It was needless to mention their names in a Pageant, but, to give the impression of accuracy, 'Goring' recites them in full. Will it be believed that, instead of reciting the real names of these gentlemen — which are duly printed in the standard (Morant's) and the modern (Cutts') histories of the town — he is actually made to recite those of the principal officers engaged in conducting the siege of Colchester? The blunder is the more inexplicable, because, of the "prisoners" he names, several are actually shown commanding troops in the contemporary siege-map, which is reproduced in the book.<sup>2</sup>

It is because this pageant pretends to be history, because of its minute affectation of accuracy, that I have sought to vindicate the truth.

In the Introduction contributed by a local town councillor, a panegyrist of "Parker pageants," we read that

The wealth of material to hand has enabled him to found the early incidents of the story on recorded facts..... The story of Helena, her marriage with Constantius Chlorus, and the ultimate acceptance of Christianity by

<sup>1</sup> See Vol. xii of the Huguenot Society's publications.

<sup>2</sup> Viz. Honeywood, Whaley, Bloys, Gurdon, Ewer, and Cook, though the fine old name of Bloys is disguised by Mr. Parker and his admirer as Bloggs! Of the remaining three named two were leading officers at the siege, namely Rainsborough, and, above all, "Henry Ireton" himself! The fourth I do not recognise.

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the Empress and her son Constantine, is derived from a mass of material six or seven centuries old at least, stored in the Borough Muniment Room in Colchester Castle.....

The sixth and last Episode.... deals most impressively with the siege of 1648, each scene and incident finding its warrant in some one of the many diaries and records still extant in the Borough Muniment Room.

One would presume that a councillor's statement on the records of his own corporation would be true. But if the writer were asked to produce the "mass of material" among the borough records on which is based "the story of Helena," her conversion, and that of her son,<sup>1</sup> or to name "the many diaries and records still extant" in that collection on which any scenes or incidents of the siege 'episode' are contained, he would find himself in a difficult position.

Let us now return from this digression to the tales of gallant "Saxons" resisting William and his Normans in the style of the Dover Pageant. I need not again dwell on the Stourton family legend concerning "Botolph Stourton, the most active in gallantly disputing every inch of ground with the foreigner and finally obtaining from the duke his own terms." For, of "this patriotic and gallant soldier" and his "exploits" Mr. Freeman disposed as a "monstrous fiction"..... "invented of set purpose to swell the credit of a family." Nevertheless the whole story was elaborated and confidently repeated in the great history of the family

<sup>1</sup> On "the myth of Coel, Helena, and Constantine" Mr. Cutts observes that "Helena was a native of Naissus, a town of Moesia, of humble parentage; Constantine was born before Constantius set foot in Britain." *Colchester* (Historic towns) pp. 50-51.

which was published some years ago, in which we read that the position of that Botolph who—

took an active part against the Norman invaders, and who himself made such a strong resistance against the Conqueror personally, led that monarch to arrange with Botolph on his own terms when the Conqueror invaded the Western parts of England..... All this is history, and it has been chronicled that it was actually at the residence of Botolph at Stourton that the Conqueror came to meet his opponents to arrange there the terms which these Saxon warriors had demanded and actually obtained from him (p. 12.)

It was fortunate for William that he had not to encounter many such gallant leaders as Bertram, lord of Ashburnham, or “ Botolph, lord of Stourton.”<sup>1</sup>

But even a Buckinghamshire squire could defy the Norman with success. Lipscombe, in his history of the county, preserves and apparently accepts the tale of Mr. Shobbington of Hedgerly Manor, who succeeded, like those two heroes, in bringing the Conqueror to terms. The Shobbingtons had held for generations this finely wooded estate when William granted it, like others, to one of his followers at the Conquest. But he did not know the man with whom he had to deal. Mr. Shobbington, declaring he would sooner die than lose the home of his ancestors, armed his servants and tenants and summoned his neighbours to his help. The Penns and the Hampdens and others of the county families of the period hastened to answer the call; they chose their position, threw up earthworks, and prepared to die in the last ditch. And if anyone

<sup>1</sup> See, for my criticism of the Stourton story, *Studies in Peerage and Family History*. pp. 50 *et seq.*

should doubt the truth of this veracious narrative, the earthworks are there to confute him.

Well might these gallant Saxons thus entrench their position, for William had supplied the Norman intruder with a thousand of his finest and bravest troops. The English, as historians inform us, could not fight on horseback ; but this did not deter them. In the words of Lipscombe.—

Whether they wanted horses or not is uncertain ; but the story goes that, having managed <sup>1</sup> a parcel of bulls, they mounted them and sallying out of their entrenchments in the night, surprised the Normans in their camp, killed many of them and put the rest to flight. The King having intelligence of it, and not thinking it safe for him, whilst his power was new and unsettled, to drive a daring and obstinate people to despair, sent a herald to them, to know what they would have, and promised Shobbington a safe-conduct if he would come to court ; which Shobbington accordingly did, riding thither upon a bull, accompanied by his seven sons. Being introduced into the royal presence, the king asked his demand, and why he alone dared to resist, when the rest of the kingdom had submitted to his government, and owned him for their sovereign ? Shobbington answered that he and his ancestors had long been inhabitants of this island, and had enjoyed that estate for many years ; that if the king would permit him to keep it, he would become his subject, and be faithful to him, as he had been to his predecessors.

The king gave him his royal word that he would, and immediately granted him the free enjoyment of his estate. Upon which the family was from thence called Shobbington alias Bulstrode ; but in process of time the first name was discontinued and that of Bulstrode only has remained to them.

Need one observe that the surname of Bulstrode

<sup>1</sup> In the old sense of the word, as applied to horses.



is merely derived from Bulstrode in Hedgerley ? Lipscombe, however, who found this narrative "amongst some ancient documents in the possession of the family of Bulstrode," recites the cumulative proof that this tale of the Conquest is true.

The truth of this story is not only confirmed by long tradition in the family, but by several memoirs which they have remaining, and by the ruins of the works that are to this day seen in the park of Bulstrode, as well as by the crest of their arms, which is a bull's head etc. etc.

And is there not also the Bull inn to remind us of the bull Mr Shobbington 'strode' ?

Should it be urged that it is waste of time to deal at the present day with tales so preposterous as this, here is the answer. A sober county historian, living under Queen Victoria, gives us his reasons for believing this story to be true. Foremost is the "long tradition in the family," that frequent and worthless plea, and among the others is their bull's head crest, which is merely derived, one need scarcely say, from the name of Bulstrode, even as the bull's head crest of the Nevills is derived from that of their Bulmer ancestors.

In Lancashire two ancient houses, the Pilkingtons of Pilkington and Rivington and the Traffords of Old Trafford, laid claim to the same legend. Both of them possessed a long pedigree, although it is certain that in neither case can it be carried back beyond the 12th century. The one outstanding feature of the legend, which varies somewhat

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case, represents a man with a flail threshing and the motto 'Now thus.' Who shall undertake to say how these tales arise? One thinks of the crest of the Lathoms, and of the earls of Derby, their descendants, with its eagle and baby legend, or of that of the Leinster FitzGerald, with its ape and baby story. Fuller's version of the tale is this :—

Being informed by my good friend Master William Ryley, Norroy [1646-1667], and this country man, <sup>1</sup> that the Pilkingtons were gentlemen of repute in this shire before the Conquest, when the chief of them, then sought for, was fain to disguise himself, a thresher in a barn. Hereupon, partly alluding to the head of the flail (falling sometime on the one, sometime on the other side,) partly to himself embracing the safest condition for the present, he gave for the motto of his arms, 'Now thus, Now thus.' <sup>2</sup>

Of the Trafford story Agarde seems to give the earliest version.

[Their] arms [i. e. crest] are a labouring man with a flayle in his hand threshinge, and this written mott,

*Now thus,*

which they say came by this occasion : that he and other gentlemen, opposing themselves against some Normans, who came to invade them ; this Trafford did them much hurte, and kepte the passages against them. But that at length the Normans having passed the ryver came sudenlye upon him, and then he disguising himselfe, went into his barne, and was threshing when they entered, yet being known by some of them, and demanded why he so abased himself, answered, *Now thus.* <sup>3</sup>

The reader will at once recognise the likeness

between this tale of private resistance to Norman invaders and those I have dealt with above. Mr. W. H. B. Bird has indeed ventured to ask : " have we, in this crude legend, a genuine tradition of the Conquest ? <sup>1</sup> " But, though he does his best, the most he actually claims is that " if we dare not say the story is true, we may at least pronounce it likely enough. " <sup>2</sup> Its likelihood I cannot see. <sup>3</sup> Mr. Bird would attach weight to the " tradition " that the Traffords held Old Trafford even before the Conquest. If so, the unlikelihood of their retaining it through that catastrophe, when other lands in that neighbourhood were passing into Norman hands, is increased, surely, by their offering armed resistance to the Normans. The forfeiture of any lands they held would have followed as a matter of course. It was only a Shobbington who could hope to retain his land by such resistance or a Stourton who could bring the Conqueror to terms by holding the " passes " against him.

It is unscientific to treat these legends in isolation. We have to place the Trafford story, with their crest of the thresher and his flail, by the side of the Hay family legend, with the Earls of Kinnoul's crest of a countryman bearing an ox-yoke, or

<sup>1</sup> *Ibid.*

<sup>2</sup> *Ibid.* p. 77.

<sup>3</sup> I have seen it stated that, in one locality, the legend is told of a Trafford of the time of the Civil War, who protected by this device his concealed treasure. This is parallel to the Dawnay story (commemorated in the crest of the family) which, we saw (p. 295) was assigned by tradition to two different periods, both, apparently, wrong. The confusion inseparable from so-called " tradition " cannot be insisted on too strongly. Even Mr. Bird rejects it in the case of Pilkington, though he admits that " the Pilkington mower is found on seals at an earlier date than Trafford's thresher " (*Ancestor*, VIII, 93) ; " the Pilkington mower had certainly been in use a century or so before. " (*Ibid.* IX, 78).

that of the Hamiltons, with its saw in the oak tree and terse motto 'Through,' in memory of the ancestor who saved himself in his flight by disguising himself as an oak-cutter when his pursuers were upon him, and exclaimed to his comrade 'Through!' No intelligent antiquary would now accept that story or would believe that a husbandman named Hay, with his two sons, armed only with ox-yokes, held a pass against the Danes pursuing the Scottish army and changed defeat to victory. It was still possible, however, to write in 1887 that this "fabulous traditionary story would still appear to be held for gospel truth in the northern district of Aberdeenshire, as various allusions were made to it on the banners and triumphal arches displayed when the eldest son of the present Earl [of Errol] came of age, as well as in the speeches delivered on that occasion."<sup>1</sup>

There is yet another tale of the Conquest, which is worthy to rank by that of Mr. Shobbington of Bucks. It is that of John de Kynnardsley of Kynnardsley Castle, Herefordshire. At the head of the 'Lineage' of Kynnersley of Leighton and also of Sneyd-Kynnersley of Loxley there appeared in 'Burke's Landed Gentry' this paragraph:—

According to an old pedigree "the family of the Kynnersleys is very ancient, being seated long before the Conquest in com. Hereford, in a castle soe called at present. In Domesday Book it is recorded that when the Conqueror was possessed of his newe kingdome of England, hee sent his Commissioners throughout y<sup>e</sup> remote parts thereof, to know howe every man held his lands. In which time there was an ould gentleman

<sup>1</sup> *Great historic families of Scotland*, II. 370.

that lived and was owner of Kynnardsley Castle in com. Hereford ; by name John de Kynnardsley, and by title a knight (if any knights were before the Conquest.) This ould gentleman was blind, he had then liveing with him twelve sonnes, whom with himself he armed, and stood in his castle gate, his halberd in his hand, attending the coming of sheriffs and other commissioners from y<sup>e</sup> King, who being arrived, demanded of him by what tenure he held his castle and lands ; y<sup>e</sup> old knight replied by his armes, showing to them his halberd.

In spite of the ingenious way in which Domesday Book is introduced, we should search it in vain for this incident, which is obviously suggested by the famous story of Earl Warenne's answer to the *Quo Waranto* enquiry in 7 Edw. I. Stubbs tells it thus, on the authority of Hemingburgh : —

The earl of Warenne in particular resented the enquiry. When he was called before the justices he produced an old rusty sword and cried, ' See, my lords, here is my warrant. My ancestors came with William the bastard and conquered their lands with the sword, with the sword will I defend them against anyone who wishes to usurp them. For the king did not conquer and subdue the land by himself, but our forefathers were with him as partners and helpers. ' The speech was mere bravado on the part of the earl, who although in the female line he represented the house of Warenne, was descended from an illegitimate half-brother of Henry II, but it expressed no doubt the view of the great feudatories of the preceding century; and it may have helped to call Edward's attention more closely etc. etc. <sup>1</sup>

But, though one must always hesitate to question anything that Stubbs accepted, it is doubtful whether we ought to recognise even this incident as true.

<sup>1</sup> *Cont. Hist.* (1875), II. 110-1.

The tale is accepted everywhere. "The earl," says Mr. Barron, "is remembered in the histories by his braggart answer to Edward I's commissioners who questioned his warranties... when Warenne showed them for warranty the ancient and rusty sword of his ancestors who had conquered the lands with it" (*Ancestor*, VI, 191). Stubbs' *Select Charters* contains the passage from Hemingburgh — a contemporary and valued chronicler; our leading historian on the period, Professor Tout, accepts the story without hesitation in his monograph on Edward I,<sup>1</sup> and repeats it in his life of the earl;<sup>2</sup> Green, of course, tells the story; and Mr. Malden, the Surrey historian, gives it to his readers as true:<sup>3</sup> the "famous" answer, he writes, "has passed into a commonplace of history." And yet it is he himself who has referred us to the legal record which proves that the earl appeared by his attorney before the justices in Surrey and made the prosaic answer of 'prescription.'<sup>4</sup> Mr. Malden, it is true, seems to think that this was subsequent to the dramatic episode of "De Warenne's rusty sword flung upon the council table"; but Hemingburgh, our only authority for the tale, distinctly assigns it, not to a council, but to the earl's appearance before the justices.<sup>5</sup>

And no one, it would seem, has observed that we have also the earl's answer to the *Quo warrant*

<sup>1</sup> *Edward the First* (1893):—"When the King's lawyers came with their writ of *quo warrant*, the earl..... bared a rusty sword," etc.

<sup>2</sup> *Dict. Nat. Biog.* (1899), LIX, 366.

<sup>3</sup> *History of Surrey*, (1900), p. 110; *Victoria History of Surrey*, I, 347.

<sup>4</sup> "a tempore a quo non exstat memoria." The coronation of Richard I was then becoming the limit of legal memory.

<sup>5</sup> "vocatusque est... comes de Warennā coram justitiarios regis et interrogatus."

enquiry in Sussex. His abuse of his franchises and hunting privileges in his Conquest lordship of Lewes was such that "Sir Robert Aguylon" petitioned Parliament for redress, stating that the earl could show no title to their exercise.<sup>1</sup> His hare-preserving was a pest to his neighbours, urged this vassal of the earl, whose manor of Perching nestled at the very foot of the South Downs. At the midsummer eyre of the year 1279 the earl

"was questioned before the Justices Itinerant in Sussex by what authority he claimed Free Warren in Worth and divers other lordships in Sussex; he pleaded that his ancestors, on the loss of Normandy and their own lands there, had compensation for the same by the grant of other lands here in England, with this privilege; that they and their heirs should have free warren in those and all other their lands which they then had, or afterwards should acquire, *in regard of their surname 'De Warennia'*"<sup>2</sup> which plea was then allowed."<sup>3</sup>

It appears that neither in Sussex nor in Surrey did the earl perform his celebrated sword trick before the King's justices. In both counties he recognised their right to ask him *Quo warranto?* and advanced a peaceful plea. Are we to infer that Hemingburgh's story, definite and elaborate though it is, is a mere invention based on his lawless and overbearing character? I find it difficult to escape from that remarkable conclusion. It should be pointed out that the tale is found in only one MS. of the chronicle and that it describes very inaccurately the *Quo warranto* proceedings.

<sup>1</sup> *Rot. Parl.*, I, 6b.

<sup>2</sup> The italics are mine.

<sup>3</sup> *Dugdale's Baronage*, I, 79, from the original plea-roll, (rot. 50).

The chronicle describes it as the king's object to know "*quo waranto magnates tenerent terras ; et si non haberent bonum warantum, seisivit statim terras illorum.*" Now the enquiry, on the contrary, was essentially one as to *franchises*, for these, according to the King's lawyers, could only exist in a subject's hands by a proved grant from the Crown.<sup>1</sup> This is fully recognised by Stubbs<sup>2</sup> and by Prof. Tout.<sup>3</sup> Lastly, Hemingburgh's statement that the King was alarmed by this incident and began to retrace his steps<sup>4</sup> is not confirmed by what we know of the *Quo waranto* proceedings.<sup>5</sup>

Pitfalls are about the historian's path, and, as I have always insisted, it is to the evidence of records he must look "as enabling the student both to amplify and to check such scanty knowledge as we now possess of the times to which they relate."<sup>6</sup> Tested by record evidence, Hemingburgh goes by the board.

But what are we to say of the amazing story actually told to the justices and apparently accepted by them as confirming the earl's claim? In the true Bulstrode spirit he alleged that his ancestors were granted free-warren "in regard of their surname *de Warennæ* !" Now the origin of their

<sup>1</sup> *History of English Law*, I, 558-9.

<sup>2</sup> "the itinerant justices were to enquire by what warrant the *franchises*..... were held." *Const. Hist.* II, 110.

<sup>3</sup> "royal commissions traversed the country, inquiring by what authority the lords exercised their exceptional powers. Many of these *franchises* were found," etc. etc. (*Edward the First*, p. 215.)

<sup>4</sup> "Rex autem, cum audivit talia, timuit subi, et ab incepto errore conquevit."

<sup>5</sup> Stubbs, after narrating the earl's indignant action, observes : "But the rigour with which the *Quo Waranto* writ was enforced shows that the King was already obliged to make extraordinary efforts to obtain money," (II, 111.)

<sup>6</sup> Prefaces to *Ancient Charters* (1888) and to *Geoffrey de Mandeville* (1892).



name is known. The Varenne is a tributary of the Arques, which flows into the sea at Dieppe ; and on it stood Varenne, now Bellencombres, where there is still seen the mighty moated mound which is the typical stronghold of a Conquest lord.<sup>1</sup> That they should have been granted freewarren because they took their name from Varenne is obviously a ludicrous story, and when we realise that the earl told it only some seventy years after the alleged grant, it throws light on the real value of those "family traditions" on which Conquest and other tales all too often rest.

And so we return to Sir John Kynnardsley confronting the Commissioners at his castle gate with his twelve sons about him. Mr. Shobbington, we remember, had only seven. It is sad to think that Sir John's halberd must go the way of Mr. Trafford's flail, of De Warenne's rusty sword, and of Mr. Shobbington on his bull, but they will find themselves in goodly company. The ghostly lords of Ashburnham and of Stourton have trod the way before them, and a host of 'Saxon' forefathers are about to follow in their train.

<sup>1</sup> See my paper on "The Castles of the Conquest" in *Archæologia*, Vol. LVIII.

# THE ORIGIN OF THE HOUSE OF LORDS <sup>1</sup>

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*Effect of the Norman Conquest—Constitution of the Witenagemot—Council of the Norman Kings—A feudal body—Composed of the tenants-in-chief—Meaning of ‘baron’—Meaning of ‘peer’—The Lord’s ‘curia’—‘Court’ and ‘council’—Principle of tenure Its breakdown in practice—Development of the writ—Writ replaces tenure—Privilege replaces duty—The ‘lesser barons’ excluded—The writ strengthens the crown—The hereditary right a safeguard.*

With every facility at their command, and with every wish to do justice to their subject, the Lords’ Committee on the Dignity of a Peer are compelled to confess, in the first of their voluminous and admirable reports,—

that after all the exertions of the former committees, as well as of the present committee, the subject has appeared to be so involved in obscurity that they have been unable to extract from the materials to which they have had recourse any conclusions perfectly satisfactory to their minds. At different times, and with different views, men of considerable talents and learning (some of them peculiarly qualified for the task by their previous studies and employments), have used the greatest industry in investi-

<sup>1</sup> The reader’s attention is particularly drawn to the fact that this paper, as explained in the Preface, is here printed as it was published a quarter of a century ago, in magazine form (Oct. Dec. 1884, May 1885). The few additions now made are enclosed in square brackets.

gating the subject; but, unfortunately, they have in general adopted certain positions, which they have sought to prove, and have suffered themselves to be misled in many instances by the influence of party and the eagerness of controversy.<sup>1</sup>

And they close that Report with these words:—

They are conscious of many defects, and fear there may be many inaccuracies in what they now offer; and they are disposed to consider this report as rather leading the members of the House to satisfy themselves by their own exertions on points which may be the subject of doubt or difficulty, than as affording all the materials necessary to remove doubt and difficulty on those points, with respect to which there may be found sufficient authority for the purpose; at the same time showing that it is highly probable that no exertion can now obtain all the information necessary to remove all doubt and difficulty on a subject apparently involved in great obscurity.<sup>2</sup>

Hallam also, in entering on an investigation of the same subject, pronounces it, with truth, “exceedingly important, but more intricate and controverted than any other.”<sup>3</sup> Nor could anyone be more conscious than myself of the difficulties that surround on every side the origin and the development of the House of Lords. I would therefore disclaim, at the outset, for my conclusions any pretensions to finality, especially where they are of an original character, based on my independent investigations.

It is impossible, moreover, within the limits of an article, to do more than generalise on so wide a subject, or to argue out each disputable point.

<sup>1</sup> 1st Report (25th May, 1820), p. 14.

<sup>2</sup> *Ib.*, p. 448.

<sup>3</sup> *Middle Ages* (1860), iii., 4.

I would insist on "a wide divergence" between the "two schools—the legal and the archæological," of which the former, from necessity and from natural tendency, has exercised, in my opinion, so injurious an influence on the study of our constitutional antiquities. Nowhere is that divergence more apparent than in the treatment of such a subject as I am about to discuss, a period of *transition*, where the same words have different meanings, not only at different periods, but even at one and the same period, and thus refuse to be bound and fettered within the narrow and misleading limits of legal definition.

I take as my starting-point the Norman Conquest. In so doing I am well aware that I am somewhat at variance with the historical school, as represented by Dr. Stubbs and Professor Freeman; and still more with the archæological, as represented by Mr. Gomme. Yet, that, in this matter, the Norman Conquest did make a distinct break in the continuity of our historical development; that the history of the House of Lords can be traced uninterruptedly back to the Norman Conquest, and (uninterruptedly) no further; that an absolutely new and fundamental principle was introduced at this point, and that from this principle all that follows can be deduced—all this I hold to be capable of absolute demonstration.

I would invite attention to four changes which distinguish the Assembly after, from the Assembly before the Conquest. (1) In *name*: the "Wite-nagemot" is replaced by the "curia" or "con-

cilium." (2) In *personnel*: the "Witan" are replaced by "Barones." (3) In *nationality*: the Englishmen are replaced by Normans. (4) In *qualification*: "wisdom" is replaced by "tenure."

It is in the fourth and last of these changes that the vital distinction is to be sought.

For what was the Witenagemot itself on the eve of the Norman Conquest? For the answer to this question we naturally turn to the works of those recognised authorities on the political and constitutional history, respectively, of that period—I mean Professor Freeman and Dr. Stubbs. Now even the former, with his democratic bias, recognises it as at that time "an aristocratic body,... a small official or aristocratic body." He adds that "the common title of those who compose it is simply the *Witan*, the *Sapientes* or *Wise Men*," and that "we find no trace of any property qualification." <sup>1</sup>

It is similarly proclaimed by Dr. Stubbs that "the members of the assembly were the wise men, the sapientes, witan"; and he further divides its *personnel* into two elements: (1) "the national officers, lay and clerical, who formed the older and more authoritative portion of the council"; (2) "the king's friends and dependents." <sup>2</sup>

But while, according to Professor Freeman, "we find no trace of nomination by the Crown," <sup>3</sup> Dr. Stubbs insists on that power of nomination, and attaches to it great importance, urging that, by its means, the kings

<sup>1</sup> *Norman Conquest*, 2nd Edit., I., 102-3, 590.

<sup>2</sup> *Const. Hist.*, i., 124-5.

<sup>3</sup> *Ut supra*.

could at any time command a majority in favour of their own policy. Under such circumstances the Witenagemot was verging towards a condition in which it would become simply the council of the king, instead of the council of the nation.<sup>1</sup>

Now, whatever differences of opinion there may be between these two great authorities,—differences which I cannot here discuss—they are both entirely at one with Kemble in rejecting what Professor Freeman terms “the strange notion of Sir Francis Palgrave, that a property qualification was needed for a seat in the Witenagemot.”

Let us now turn from the Witan to the council of the Norman kings.

There would appear to me to be three paths by which we may approach that difficult subject, the constitution of the National Council under the Conqueror and his immediate successors. We may either (1) examine that constitution at the point where it emerges from obscurity, and work backwards from that point to the Conquest. Or we may (2) collect from contemporary writers the references to such councils as were held during this period, and draw, from the language employed, inferences as to their probable constitution. Or we may (3) investigate the Conqueror's principles of administration, and then, applying them to the circumstances of the case, and adjusting them by his political necessities, form our conclusions as to the course he would be most likely to adopt. And if these three different paths should lead us to the same conclusion, we may safely

<sup>1</sup> *Const. Hist.*, i., 140.

claim that such conclusion is not likely to be wrong.

Briefly pursuing these three methods, we obtain, as to the first, from Dr. Stubbs himself, when treating of the "gatherings of magnates" in the great council of the kingdom, the following definite admission:—

that those gatherings, when they emerge from obscurity in the reign of Henry II., were *assemblies of tenants-in-chief*; is clear on the face of the history.<sup>1</sup>

And in another place he again observes that the national council under Henry II. and his sons seems, in one aspect, to be a realization of *the principle which was introduced at the Conquest*, and had been developed and grown into consistency under the Norman kings, that of *a complete council of feudal tenants-in-chief*.<sup>2</sup>

It is true that he regards this feudal ideal as having been less perfectly attained, and, indeed, only inchoate, in the days of the Conqueror himself, when he would assign to the assembly a constitution more nearly resembling that of the Witan. But as, from its introduction into England with the Conquest, the feudal system had to struggle for existence against adverse and disintegrating influences, we must presume that it would be more, not less, powerful under the Conqueror than under the second Henry. Whatever may have been, in practice, the composition of the Conqueror's councils, we must infer that, in theory, from the first they must have been composed of tenants-in-chief.

<sup>1</sup> *Const. Hist.*, i., 356.

<sup>2</sup> *Ib.*, i., 563-4. [The Italics are mine].

Dr. Stubbs' view is clear and consistent. He calls upon us to see

(1) in the Witenagemot a council composed of the wise men of the nation ; (2) in the court of the Conqueror and his sons a similar assembly with a different qualification ; (3) and in that of Henry II., a complete feudal council of the king's tenants. <sup>1</sup>

And he similarly contends, in his auxiliary work, that

although not, perhaps, all at once, the national council, instead of being the assembly of the wise men of the kingdom, became the king's court of feudal vassals,

and that, at any rate, by the time of Henry II., " its composition was a perfect feudal court." <sup>2</sup>

The only point, therefore, that I question, is whether this court is at all likely to have been less feudal under the Conqueror himself than under Henry II. Admit, as Dr. Stubbs does, the " different qualification," and the question, I would submit, is at an end : we have at once an assembly founded on *tenure*, that entirely new and distinctive " principle which was introduced at the Conquest." <sup>3</sup>

Secondly, as to the constituents of the Council during this obscure period, slight as is the available evidence, it points to the same conclusion. The Conqueror announces himself as acting " *communi consilio et concilio archiepiscoporum et episcoporum et abbatum et omnium principum regni mei*," <sup>4</sup>

<sup>1</sup> *Const. Hist.*, ii., 168.

<sup>2</sup> *Select Charters*, pp. 15, 22.

<sup>3</sup> *Const. Hist.*, i., 564. See on this point, p. 257, where it is contended that " the organisation of government " on the feudal " basis " was actually " *put an end to* " by " the legal and constitutional reforms of Henry II. "

<sup>4</sup> Ordinance separating the spiritual and temporal courts.



while the chronicler describes him as acting "consilio baronum suorum."<sup>1</sup> In the charter of liberties of Henry I. (1100) the expression used is similarly—"communi consilio baronum totius regni Angliæ,"<sup>2</sup> and we shall see below that the *barones* were the body of tenants-in-chief. It is true that, according to Professor Freeman, "the body thus gathered together kept their old constitutional name of the Witan,"<sup>3</sup> but for this assertion he has no evidence, either from official documents or from Norman chroniclers. He takes the expression from the English chronicle, the compiler of which would cling to the term, at once from habit and from patriotism. We have, indeed, a *reductio ad absurdum* in the fact that we might claim on the same ground that the true title of Pontius Pilate was that of "shireman" of Judea! Dr. Stubbs more accurately assigns to the assembly "the title of the great court or council,"<sup>4</sup> the title, in fact, which had been borne by the assembly of the Norman dukes.

[I leave the paragraph preceding as it was originally written, because it is absolutely correct in its statement as to Mr. Freeman. It has, however, been brought to my notice that he was infuriated by this criticism on the part of a young writer. He wrote in protest from Somerleaze (27 Aug. 1885) to the late Mr. Edward Walford, and on Mr. Walford's death, the letter came into the market and

<sup>1</sup> R. Hoveden, *Chronica*, ii., 218.

<sup>2</sup> *Select Charters*, i., 96.

<sup>3</sup> *Norman Conquest*, iv. 623; cf. pp. 690, 694, etc., etc.

<sup>4</sup> *Const. Hist.*, i., 356.

was acquired by one of my friends. From it I take this outburst :

In one case I really must use the words direct falsehood. ....Mr. Round says something to the effect that I have said that the [name] *Witan* or *Sapientes* was continued long after the Norman Conquest, but that I bring no instances..... Now he could hardly have written that without having *Norman Conquest* V, 412 before him and here instances of the use of *sapientes* in that way are given. He must have trusted to the likelihood—a strong one certainly—that his readers would accept what he said without making the reference.

On the contrary, I hope that my readers *will* make the reference. They will then discover that the supposed instances are nothing of the kind. Mr. Freeman's text there runs :—

The name of *Witan* indeed dies out ; the formal style of the wise men is lost in such vague descriptions as *proceres* and *magnates*. But the ancient title dies out very gradually. It long survived the Conquest, both in its English and in its Latin form.

In the footnote to which we are referred we find the proof given thus :

the name *Witan* ..... goes on in Latin. In Benedict, I, 116 Henry the Second consults “archipresules episcopos et comites et *sapientiores* regni sui.” Again in I. 169 he appoints a court officer “Consilio episcoporum suorum et aliorum quorundam *sapientum virorum* regni sui.” Lastly in I, 207 he settles the number of the judges ” “per consilium *sapientum* regni sui.”

Of these quotations the very first is decisive, it will be seen, against Prof. Freeman. For who were the essential members of the old *Witan*? The archbishops, bishops, and earls. Yet the

chronicler here names them *separately* from the "sapientiores regni sui," which proves that by the latter term he did not mean the Witan, in which they would have been comprised. The point is not only of some importance in itself, but also an interesting illustration of Mr. Freeman's persistent error (which may not be sufficiently realised) in assuming a specialised meaning for words which had actually a looser denotation than now. A 12th century chronicler would no more use *sapientiores* in the restricted sense of "the Witan" than he would use "majores natu" in the sense only of the Ealdormen. My statement that Mr. Freeman could produce no evidence "either from official documents or from Norman chroniclers" remains unshaken.]

Thirdly, passing to the policy of the Conqueror, it is now, of course, a recognised fact that it was essentially "a policy of combination, whereby the strongest and safest elements in two nations were so united as to support one sovereign and irresponsible lord."<sup>1</sup> But it is also a fact that, the Norman system originating as it were from above and the English from below—the former strongest at the centre, and the latter at the extremities,—these "strongest and safest elements" were to be sought in the upper portion of the Norman body politic, and in the lower portion of the English. Thus it would be the object of the Norman kings "to strengthen the Curia Regis, and to protect the popular courts."<sup>2</sup> Consequently, the retention of

<sup>1</sup> *Ib.*, i., 444.

<sup>2</sup> *Ib.*

the English Witan would not form part of the "policy of combination." The Norman *curia* or *concilium*, moreover, would derive, as we shall see, from the feudal lord its existence and its *raison d'être*: the Witan, on the contrary, derived their authority from comparatively independent sources. Here again, then, the former would be selected by the Norman kings.<sup>1</sup> Practically, the policy of the Conqueror may be thus briefly summarised: to use his rights as feudal lord to strengthen his position as king; and, on the other hand, to use his rights as king wherever he was weak as feudal lord. Now, turning from the two extremities of his administrative system to the two periods of his reign, we see how this principle must have worked. So long as his danger was from the resistance of the English, or the invasions of their allies, he would be found to rely on that feudal system which formed the tie between him and his scattered followers. But when his hold on the country grew firmer, and he could set himself to check the feudal element, his government would then become less exclusively feudal. Here, then, we are driven to the same conclusion, namely, that the feudal council must have been introduced with the Conquest.

We may notice, at this point, the famous assembly of 1086, at Salisbury, because it has been vigorously claimed as a survival of the old national assembly of freemen. Mr. Gomme claims for it that

Here, indeed, was a great primary assembly, unin-

<sup>1</sup> It will be observed that here I incline to Gneist's view (*Verwalt.*, i., 238 sq.), rather than to that of Dr. Stubbs.

fluenced by Norman laws, and tradition has handed down through the chronicler Orderic that the number here assembled was no less than sixty thousand.<sup>1</sup>

But let us turn to the truly contemporary accounts, not to that so styled by the Lords' Committee,<sup>2</sup> and learn from them, as quoted by Dr. Stubbs himself,<sup>3</sup> the true composition of this assembly. It consisted of (*a*) the tenants-in-chief; (*b*) their own feudal tenants (*milites eorum*), and of no one else. As to there being "no less than sixty thousand" present, that number, as Mr. Freeman reminds us,<sup>4</sup> comes from Orderic, who bases it on his notoriously absurd boast that the Conqueror divided the kingdom into fees for sixty thousand knights ("lx millia militum."<sup>5</sup>)<sup>6</sup> This fact is of special importance as proving that Orderic is at one with Florence in limiting this assembly to *milites*, and including no class below them. And the purpose of the assembly agrees with its consti-

<sup>1</sup> *Antiquary*, ix., 55.

<sup>2</sup> 1st Report, p. 34.

<sup>3</sup> *Select Charters*, p. 78; *Const. Hist.*, i., 266.

<sup>4</sup> *Norm. Conq.*, iv., 695.

<sup>5</sup> *Lib.* iv., cap 7.

<sup>6</sup> The argument is this: Florence excludes from this gathering all beneath the class of "milites," by which term (as the early portion of the passage shows) he means the under-tenants enfeoffed by the tenants-in-chief.

Ordericus says, in one place, that there were sixty thousand present at this gathering. In another he asserts that the Conqueror (649 D) had "lx millia militum" in England, and in another that the Conqueror so disposed the land into knights' fees "ut Angliæ regnum lx millia militum indesinenter haberet" (iv. 7).

*Ergo*, Ordericus must have based his 60,000 at Salisbury, on his estimate of the knight's fees, and, consequently, must have meant that the 60,000 at Salisbury were all *milites* (cf. "se tertio" etc.) which is precisely what Florence tells us.

It is very instructive to compare this "body whose numbers were handed down by tradition as no less than sixty thousand" (*Norm. Conq.* iv 694) with the "sixty thousand horsemen" (*Ib.* iv. 562)—"ut ferunt, sexaginta millia equitum" (533 C)—of thirteen years earlier, and the numbers of the Norman invaders "commonly given at sixty thousand" (*Ib.* iii. 387) of seven years earlier still. Orderic there gives (500 B)—"quingenta millia equitum cum copiâ peditum," where *milites* were obviously horsemen.

tution. The under-tenants swore fealty to William as their feudal lord—they became his “men” (*wæron his menn*)—that their lords, the tenants-in-chief, might not be able to claim their exclusive fealty, if engaged in rebellion against the king. Lastly, though we find Dr. Stubbs speaking of “the great councils of Salisbury in 1086 and 1116,”<sup>1</sup> and even claiming such assemblies as one form of “the royal council;”<sup>2</sup> yet Mr. Hunt has shown good reason for doubting whether the assembly of 1116 corresponded with the peculiar character of the gathering in 1086,<sup>3</sup> and, as to the latter, I find no evidence whatever that it can be described as, or in any way discharged the functions of, a “Council.” This distinction is of great importance, as, had it done so, the royal council would not have been limited, as it essentially was limited, to the tenants-in-chief alone.

Two more points have yet to be noticed, as they seem to have been hitherto overlooked, and as they throw light on that important subject, the denotation of *barones* and *milites*. In the same passage in which he describes the gathering, Florence alludes to the great Survey: “Quantum terræ quisque *baronum* suorum possidebat, quot feudatos *milites*” (*i. e.*, how many tenants they had enfeoffed). We see that the *barones* must here include *the whole body of tenants-in-chief*. When, therefore, he goes on to speak of those present at the Salisbury gathering as “archiepiscopi, etc., etc., . . . cum suis militibus,” we understand that all the former

<sup>1</sup> *Const. Hist.* i., 358.

<sup>2</sup> *Ib.*, i., 564.

<sup>3</sup> *Norman Britain* (1884), pp. 120-1.

are summed up in the class of tenants-in-chief, while the latter are, similarly, their feudal tenants.<sup>1</sup> And finally, when we compare the passage in Florence with that in the *English Chronicle*, we find the two classes rendered by "his witan and ealle tha land-sittende men," thus proving the very point I contended for, namely, that by "witan," in the Conqueror's reign, was really meant nothing else than *barones*, that feudal council of tenants-in-chief, based on the new principle of *tenure*, which, as Dr. Stubbs observes, was "introduced at the Conquest."

Thus, then, to resume the results of our investigation, we have seen that the old English Wite-nagemot was replaced under the Norman kings, and indeed, in my own opinion, immediately after the Conquest, by a feudal council, which though it might, in practice, bear to it a certain superficial resemblance, was based on a wholly novel and radically distinct principle, the principle of *tenure*. That council was co-extensive with the tenants-in-chief, the *barones regis*, who sat in it exclusively as such. It will next be my object to trace the process by which that council was restricted in practice, and so, eventually, in principle, to one section of those tenants-in-chief, and thus to connect our House of Lords, as a baronage and as a peerage, with the *barones* and the *pares* of Norman days.

I shall hope to show, in so doing, that this great historic institution springs from a single principle, a principle to which its existence can be traced by

<sup>1</sup> All the tenants-in-chief, I mean, were, *as such*, "barones." But those who enjoyed, in addition, an official dignity, as the Earls, Bishops, etc., would, of course, figure under those names in ordinary affairs of state.

overwhelming proof. And that principle is—*Vassalage*.

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In the former part of this paper, it may be remembered, I undertook "to connect our House of Lords, as a baronage and as a peerage with the *barones* and the *pares* of Norman days."

By so doing I proposed to establish that this assembly is of essentially *feudal* origin, and that the fundamental principle from which it springs is no other than *Vassalage*.

It is wonderful, when we glance at the literature of this subject, to perceive the wasted ingenuity and labour, the hesitating results, and the singular errors that are one and all owing to the want of proper definitions. If the great scholars who have handled this subject had only, before writing about "barons" and "peers," endeavoured to form a clear conception of the meaning, or meanings, of *barones* and *pares*, they would have been saved from many a pitfall, and might even have discovered that in the meaning of these terms is to be found the key to the entire problem.

When, for instance, in a remarkable passage, unnoticed, so far as I know, by historians, William de Braose is represented as appealing to the judgment of "the barons my peers"<sup>1</sup>—and this so early as 1208—it may well be wondered what idea it conveys to those whose eyes it meets, either of the class to whom he appealed, or of the grounds on which he appealed to them. I propose, then,

<sup>1</sup> "Paratus sum et ero domino meo etiam sine obsidibus satisfacere secundum iudicium curiæ suæ et baronum parium meorum, certo mihi assignato die et loco."—M. PARIS, *Chronica Majora* (Ed. 1874), ii, 524.



here to adopt as my text four words which occur in this passage : *dominus, curia, barones, pares*. But let us first endeavour to form a clear conception of the meanings of the term *barones*.

The development of the word must be sought, I would suggest, not in the relation of the "man" to his *land*, but in the relation of the "man" to his *lord*. For myself, I claim for *baro* six distinct meanings, most of which were in use at one and the same time.

1. A *man*. Dr. Stubbs speaks of it as "in its origin equivalent to *homo*," and as "used in the *Leges Alamannorum*...for *man* generally."<sup>1</sup> Scholars differ as to its etymology, but are agreed that such was its meaning when it emerged in the eighth century. This meaning survived in the "baron et feme" of the law-books, and, indeed, still survives in the "baron and femme" of heraldry. For *baro*, like the allied *vir*, meant not only "man generally," but man in the special sense of our "man and wife."

2. A *vassal*. "The word," says Dr. Stubbs, "receives, under feudal institutions, like *homo* itself, the meaning of vassal."<sup>2</sup> This meaning survived not only in the "court baron" (of which more below), but in the occasional use of *barones* by certain great tenants-in-chief, to indicate their under-tenants. It may be added that not only *homo*, but our own "man," was undergoing a like development, as in the "wæron his *menn*," quoted by me above.<sup>3</sup>

<sup>1</sup> *Const. Hist.*, i. 365. So, "tam baronem quam feminam" (*Lex Rip. Tit.* 58, No. 12) and "barum aut feminam" (*Lex Alam. Tit.* 76).

<sup>2</sup> *Ibid.*

<sup>3</sup> p. 319.

3. A *tenant-in-chief*. In this, the most important of all its meanings, *baro* is a contraction of "*baro regis*,"<sup>1</sup> the vassal of *the king* being so distinguished from "vassal" generally. *Baro*, says Dr. Stubbs, "appears in Domesday, and in the charter of Henry I., in its recognised meaning of a *tenant-in-chief of the king*."<sup>2</sup> How it came to assume that meaning, no one, I believe, has attempted to explain. I cannot but think that advantage was taken of the existence, side by side, of the forms *homo* and *baro* to specialise the latter as a *tenant-in-chief*, while the former represented that tenant's men, *i.e.*, the "under tenants."<sup>3</sup> That such a distinction did, in practice, grow up, is clear, and its obvious convenience is surely the explanation.

4. A *palatine tenant*. Its use in this highly specialised meaning is most familiar in the case of the Palatine Earldom of Chester. Here, again, I am not aware that any explanation has been suggested. But if I am right in the view that I have expressed in the preceding paragraph, it would follow, most naturally, that, as possessing "the regalia," an Earl Palatine would desire that those who held of him in chief should be distinguished by the same name as those who held in chief of the king.<sup>4</sup>

The same suggestion would also explain why the more powerful even of the non-palatine lords would occasionally take upon themselves to address their tenants as "barones."

<sup>1</sup> "Magnus homo et baro regis."—*Royal Letters*, i. 102, 104.

<sup>2</sup> *Const. Hist.*, i. 365. [The italics are mine].

<sup>3</sup> "Homines baronum meorum."—*Charter of Henry I.* (1101).

<sup>4</sup> "The Earl.... was said to hold his earldom as freely by his sword as the king held England by his crown," etc., etc.—*Const. Hist.*, i. 363.

5. A *tenant-in-chief not otherwise distinguished*. I have already (see p. 320) alluded to the importance of this distinction. "Every earl," says Hallam, "was also a baron."<sup>1</sup> "All the members," we are reminded by Dr. Stubbs, "were barons by tenure, greater or less."<sup>2</sup> That is to say, all the members were *barones (regis)*—tenants-in-chief,—but those who, in addition, possessed special titles, earls, bishops, abbots, and so forth, were also, and more usually, spoken of by these names. Thus it first came to pass that "barones" were identified, like modern "barons," with the lowest rank in the peerage.

But it must always be remembered that this which I have classed as the *fifth* meaning of the word was in use concurrently with the *third* (and others), and that it is only from the context we can tell in which sense it is employed.

I shall recur below to the vital point to which this distinction leads us, namely, whether all the members of the Assembly sat in it as "barones" (*i.e.*, in virtue of being tenants-in-chief), or whether the earls, etc., sat in it by some different right.

6. A member of *the upper section of the preceding class*. Just as the tendency to distinguish earls, bishops, etc., from the other *barones* narrowed the limits of the baronage *from above*, so the tendency to exclude from its ranks the "lesser" barons (*barones minores*) similarly narrowed it *from below*. The goal therefore to which the "baro" was tending was that of a *member of the more important*

<sup>1</sup> *Middle Ages*, iii. 5.

<sup>2</sup> *Const. Hist.*, i. 358.

*class* (" *barones majores* ") of *tenants-in-chief* not distinguished by any higher title.

I trust the above classification may serve to clear the ground, and to save us from those pitfalls which are chiefly owing to the want of these very definitions.

It is needless to include such forms as the "Barons of the Exchequer" (from whom may be traced our use of the word in the courts of justice to this day)—for they merely represented those members of the *curia* (i.e., the *barones* in the "third" sense) who acted as its Exchequer Committee—or such as the "Barons" of London and of the Cinque Ports, which I look upon as an attempt to feudalise (in form) the tenure of our more important towns.

Pass we now to the *Pares*. Just as the *barones* were, in their origin, *vassals*, so the *pares*, as Madox has shown, were in their origin *fellow-vassals*.<sup>1</sup> Their parity consisted in the fact of their holding of a common lord by a common tenure. And just as "barones" was qualified, as we have seen, by various words not expressed, so "pares" represented the expression "*pares curiæ*." But, it will be remembered, this parity and its corollary, the *judicium parium* ("trial by peers"), was confined to no one class in the vast feudal hierarchy. It was applied to all freemen (*liberi homines*) by the Great Charter (Art. 39), and I have even noted a case in which all the tenants of an abbey were entitled to certain privileges, *except* one unfortunate class and

<sup>1</sup> *Baronia Anglica*, p. 14. So Spelman :—"Pares dicuntur qui, acceptis ab eodem domino.....feudis, pari legi vivunt, et dicuntur omnes pares curiæ", etc.

their "*pares*." It was, therefore, obviously desirable that the highest class of "*pares*"—those who were such in virtue of their holding directly from the Crown—should be distinguished from all those who were *pares* of any lower *curia*. In the need of such distinction, I venture to think, arose the style of "*pieres de la terre*," or (as we now say) "*peers of the realm*,"—for those who in virtue of their tenure *in capite* were the "*pares*" of the "*curia regis*."

We have now analysed *barones* and *pares*, and have seen that they were essentially terms of relation. Vassals were *barones* relatively to their lord; they were *pares* relatively to one another. That by "*peers*" is meant simply "*equals*," it is not so difficult to realise; but that "*baron*," which has now so long represented superiority and distinction, should have originally implied inferiority and subjection, is a fact too often forgotten, or perhaps unconsciously overlooked. Hence it is that the ludicrous error as to the meaning of "*court-baron*" has obtained so wide a prevalence. Lynch, the Irish institutional writer, though reputed a specialist on the subject, actually looked on a court-baron as so called from being the court of a parliamentary "*baron*"; while, in the latest edition of the *Encyclopædia Britannica*, "*C. J. R.*" thus writes of Baron:—

The origin and comparative antiquity of barons have been the subject of much research amongst antiquaries. The most probable opinion is that they were the same as our present lords of manors (!); and to this the appellation of court-baron given to the lord's court, and incident

to every manor, seems to lend countenance . . . but the latter only [*i.e.*, those holding by grand sergeantry] . . . possessed both a civil and criminal jurisdiction, each in his *curia baronis* !<sup>1</sup>—Vol. iii., p. 388.

We are now in a better position to understand the appeal of William de Braose to the judgment of the “barons” his “peers” (*judicium curiæ suæ et baronum parium meorum*). Dr. Stubbs observes of the Great Charter (Art. 39):—

The *judicium parium* was indeed no novelty ; it lay at the foundation of all German law ; and the very formula here used is probably adopted from the laws of the Frankonian and Saxon Cæsars.<sup>2</sup>

But the record to which I would invite attention is one far earlier than the Great Charter ; it is the writ of John’s great grandfather, issued, according to Dr. Stubbs, in 1108–1112, and printed in his *Select Charters* at p. 99. By the side of the passage here extracted I print an extract from the *Libri Feudorum* as almost startling evidence of the sources of Henry’s enactments.

CONRAD THE SALIC.

(1024—1036.)

Si contentio fuerit de beneficio inter capitaneos, coram imperatore definiri debet ; si vero fuerit contentio inter minores valvassores et majores de beneficio, in

HENRY THE FIRST.

(1108—1112.)

Et si amodo exsurgat placitum de divisione terrarum, si est inter barones meos dominicos tractetur placitum in curiâ mea : et si est inter vavassores duorum

<sup>1</sup> For the true meaning of court-baron, see *Const. Hist.*, i. 399 :—“Every manor had a court baron, the ancient gemot of the township, in which by-laws were made and other local business transacted. . . . Those manors whose lords had. . . sac and soc. . . . had also a court *leet*, or criminal jurisdiction.”

<sup>2</sup> *Ibid.*, i. 537.

judicio parium suorum defidominorum tractetur in  
niatur per judicem curtis.— comitatu.—*Fœdera*, i. 12 ;  
*Lib. Feud.* i. xviii. *Select Charters*, p. 99.

The very use of the rare term *vavassores* is significant as to the inspiration of Henry's writ, which enforces the point on which I have insisted, namely, the essentially *feudal* origin of the *curia*, and of its descendant, the House of Lords.

But we must bear in mind that William de Braose, when he claimed to be judged by the "barones," his "pares" (1208), claimed to be so judged in the "*curia*" of his "*dominus*." Just so, in 1341, the Lords asserted their right to be judged by their peers in *full parliament*.<sup>1</sup> Here we have at once a striking illustration of that descent of Parliament from the *curia* on which I am about to enlarge. For what was this *curia*—*mea curia*, as Henry I. in the above writ terms it? In its origin it was nothing but that court of the feudal lord (*dominus*), to which his vassals owed suit and service, in which they were judged by their fellow vassals, and which, when summoned, they were bound to attend. When the *dominus* happened to be the king, his *curia* was distinguished as the *curia regis*. But it was obviously as *dominus*, not as *rex*, that he held and presided in that court. Now the problem we have to solve is this: Can we connect this *curia* with the *concilium*? Can we deduce the latter from the former? Or must we seek for it a different origin?

On this point Dr. Stubbs observes:

<sup>1</sup> "Les piers de la terre. . . ne doivent respondre, n'estre juggez fors que en pleyn parlement et devant les piers."—*Rot. Parl.*, ii. 127.

It would be rash to affirm that the Supreme Courts of Judicature and Finance were committees of the national council, *though the title of Curia belongs to both*, and it is difficult to see where the functions of the one end and those of the other begin.<sup>1</sup> And it would be scarcely less rash to regard the two great tribunals, the Curia Regis and Exchequer, as mere sessions of the king's household ministers, undertaking the administration of national business without reference to the action of the great council of the kingdom. The historical development of the system is obscure in the extreme . . . . The great gatherings of the national council may be regarded as full sessions of the Curia Regis, or the Curia Regis as a perpetual committee of the national council, but there is no evidence to prove that the supreme judicature so originated.<sup>2</sup>

The gist of the matter, however, is given in the following passage:—

It may be enough here to note that, whereas under William the Conqueror and William Rufus the term *curia* generally, if not invariably, refers to the solemn courts held thrice a year or on particular summons, at which all tenants-in-chief were supposed to attend, from the reign of Henry I. we have distinct traces of a judicial system, a supreme court of justice called the Curia Regis, presided over by the king or justiciar.<sup>3</sup>

The use of *curia*, under the Conqueror, is illustrated by the passage from William of Malmesbury (*Vit. S. Wulfst.*, ii. 12):—

Rex Willelmus consuetudinem . . . ut ter in anno cuncti optimates ad *curiam* convenirent de necessariis regni tractaturi, etc., etc.<sup>4</sup>

<sup>1</sup> The italics are my own.

<sup>2</sup> *Const. Hist.*, i. 376, 387.

<sup>3</sup> *Ibid.*, i. 376-7.

<sup>4</sup> *Ibid.*, i. 370.



And Dr. Stubbs himself (i. 369-70) speaks alternately of these assemblies as "courts" and "councils." Why, then, are we to seek for the *concilium* a different origin than the *curia*? Why should we fly in the face of history when the *concilium*, as I shall show, can be deduced from the *curia*?

It is notorious that among the duties which vassals owed to their lord was that of "counsel"—when he asked for it. But it also is obvious that such "counsel" would, in early days, be rarely asked for, and would, for practical purposes, be little more than a formality. Dr. Stubbs accordingly observes of the early "courts" or "councils":—

The exercise of their powers depended on the will of the king, and under the Conqueror and his sons there are scarcely any traces of independent action in them.<sup>1</sup>

As yet, therefore, the *curia* would be chiefly viewed as a court (in the sense in which we speak of "a court of justice") in which the king, as lord, administered justice to his vassals. But as "counsel" (*consilium*) became, in form at least, a more prominent feature in those gatherings, so they would tend to assume the name of "council" (*concilium*). Here we have one of those instances in which, as I contend, a careful study of the *word* throws light on the history of the *thing*. But while this process was taking place on the one hand, on the other there was simultaneously growing up "a judicial system," as Dr. Stubbs

<sup>1</sup> *Ibid.*

terms it (*vide supra*), which involved the existence of a department with specially trained officials. Here, then, as it seems to me, is a rational and consistent explanation of the development of the *concilium* from the *curia*. As the assembly of vassals became gradually known as the *concilium* (from the growing prominence of the "counsel" feature), so the title of *curia regis* would be gradually monopolised, in the most natural course, by the *curia* in its judicial (the older) aspect. Thus would the terms "court" and "council," which remained synonymous, as Dr. Stubbs admits, for some time after the Conquest, be gradually differentiated in meaning, the *concilium* denoting the "curia" in its consultative aspect, and becoming thus the parent of the House of Lords, and eventually of all "Parliament"; while the *curia regis* represented the "curia" in its (older and) judicial aspect, and became the parent, not only of our judicature, but also, through the Exchequer, of our financial administration; for it need hardly be observed that in the Norman period the judicial and financial systems were so united as to be practically one.

Whether the above view may meet with acceptance or not, I would claim for it that it is at least scientific. Why does Dr. Stubbs leave us, after all, to wander in the regions of conjecture? Why is he driven, as we have seen, to confess that the "development of the system is obscure in the extreme"? Because the determination to divorce the *concilium* from the *curia* in origin, and to derive the former, at all hazards, from the Witan pre-

cludes a consistent explanation and leaves the *curia regis* in the air, its origin undetermined, its development haphazard. Once admit that in the feudal *curia*, an institution of which the existence is undisputed, we have the common origin, by a natural development, at once of the *concilium* and of the *curia regis*, and all these difficulties vanish.

I am, of course, aware that such a view as this exposes me to the characteristic rejoinder from Mr. Freeman that I cannot possibly be a "real scholar" or have read my "history with common care;"<sup>1</sup> but, convincing as that argument should doubtless be, I am compelled to believe that the House of Lords descends, on the contrary, "by unbroken succession," not from the "primary assembly" of freemen, not even from the aristocratic *Witan*, but from the feudal *curia*, in which the *dominus* was surrounded by his *barones*.

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#### THE TRANSITION FROM TENURE TO WRIT

In investigating the transition from tenure to writ we have, admittedly, to take for our "fixed point" the well-known clause of the Great Charter:—

Et ad habendum commune consilium regni, de auxilio

<sup>1</sup> "I hold that the House of Lords is by personal identity, by unbroken succession, the ancient Witenagemot, and further that the ancient Witenagemot was a body in which every freeman of the realm had, in theory at least, the right to attend and take part in person. *The former of these two positions I do not expect that any real scholar will dispute*; the latter has been made—and I do not at all wonder at it—the subject of much dispute. The unbroken continuity of our national assemblies before and after the Norman conquest is manifest to *everyone who reads his history with common care*..... There is no change which implies any break in what we may term their corporate succession."—*Fortnightly Review*, xxxiii, 240 (Feb. 1883).

assidendo aliter quam in tribus casibus prædictis, vel de scutagio assidendo, summoneri faciemus archiepiscopos, episcopos, abbates, comites, et majores barones, sigillatim<sup>1</sup> per litteras nostras; et præterea faciemus summoneri in generali, per vice-comites et ballivos nostros, omnes illos qui de nobis tenent in capite.

This is our *terminus ad quem*. A century and a half, we must remember, had elapsed between the Conquest and the Great Charter, and, as we have seen, for that lengthy period the evidence is so scanty as to leave a wide field legitimately open to conjecture. But from whatever principle we elect to start, we have to arrive somehow or other at the same *terminus ad quem*. There, at length, we stand on sure and common ground.

Now, differing as I do both from Dr. Stubbs and from Mr. Freeman, it is necessary that I should call attention to the striking way in which they differ between themselves. While they both look ultimately to the Witan, Dr. Stubbs elects to derive the assembly from a small council of "magnates"; Mr. Freeman from a gathering of all landowners, if not, indeed, of all freemen. Consequently, to reach their common goal, they have to follow paths which involve the adoption of theories diametrically opposed. Dr. Stubbs brings us to the Great Charter by widening the constitution of the assembly; Mr. Freeman by narrowing it. In the view of the former, the assembly was passing through a process of expansion; in the view of the latter,

<sup>1</sup> [I do not hesitate to render this, as Stubbs did "singly by our letters," reading therefore, "singillatim." Mr. McKechnie, however, in his valuable monograph on the Charter (*Magna Carta*, 1905), renders: "by our letters under seal" (p. 291). But the Latin will not bear this sense.]

through one of contraction. Thus, Dr. Stubbs writes of the reign of Henry II. :—

Greater prominence and a more definite position are assigned to the minor tenants-in chief ; there is a growing recognition of their real constitutional importance, a gradual definition of their title to be represented and of the manner of representation, and a growing tendency to admit not only them, but the whole body of smaller landowners, of whom the minor tenants-in-chief are but an insignificant portion, to the same rights.... The point at which the growth of this principle had arrived during the period before us is marked by the fourteenth article of the Great Charter..... The council is thus *no longer limited to the magnates ; but it is not extended so as to include the whole nation, it halts at the tenants-in-chief.*<sup>1</sup>

Mr. Freeman, on the contrary, argues as follows on this same “fourteenth article” :—

The vague practice of earlier times had stiffened into a definite custom.... The right to be summoned was established in the case of the King’s tenants-in-chief ; but it did not go further. This amounted to a *practical disfranchisement of all but the King’s tenants-in chief.* There was no need to take away their right by any formal enactment.... *the “land-sitting-men” of Salisbury easily stiffened into the tenants-in-chief of the Great Charter.*<sup>2</sup>

So far from “the land-sittende men” including the tenants-in-chief, they were expressly distinguished from them. This misapprehension is one of the causes of the errors in Mr. Freeman’s theory. The point of the comparison, however, remains. The two views of the process which had been taking place from the Conquest are opposite and irreconcilable.

<sup>1</sup> *Const. Hist.*, i., 564, 566.

<sup>2</sup> *Norm. Conq.*, v., 409-10.

Dr. Stubbs and Mr. Freeman are both wrong ; but I shall here, as throughout, address myself to the views of the former, as alone deserving of notice.

I claim, it may be remembered, that the House of Lords “descends..... from the feudal *curia*, in which the *dominus* is surrounded by his *barones*. ”<sup>1</sup> Once firmly grasp the conception of these *barones*, and no difficulties remain.

After straining every nerve to minimise the feudalising results of the Conquest, even Mr. Freeman is compelled to admit that—

the effect of William’s confiscations and grants was to bring the tenure of land, the holding of land as a grant from a lord, into a prominence which it had never had before, to make it, in short, the chief element in the polity of the kingdom.<sup>2</sup>

That is precisely my contention. This was, in Dr. Stubbs’ words, “the principle which was introduced at the Conquest.”<sup>3</sup>

The tenure of land was that “different qualification”<sup>4</sup> for a place in the assembly from that which had been known before the Conquest. If, like most of our historians, we look no deeper than the surface, we may fail to detect any striking change ; but if we keep steadily before us the “different qualification,” the principle of *tenure*, we shall readily understand all that follows.

What then is the principle of *tenure* ? Dr. Stubbs possibly, Mr. Freeman certainly, have failed

<sup>1</sup> See p. 349 above.

<sup>2</sup> *Norm. Conq.*, v., 370.

<sup>3</sup> See p. 329 above.

<sup>4</sup> See p. 330 above.

to steep themselves in feudal principles sufficiently to grasp this idea. When we speak of "Barony by tenure," the idea suggested is always that of a dignity held in virtue of the possession of a particular estate. We think of such cases as the Earldom of Arundel, or the famous Barony of Berkeley. But this is not the principle of *tenure*. Tenure does not turn on what or where the land is, but on how it is held ; tenure does not imply the relation of a man to his land, but his relation to his lord ; tenure is not his privilege as the lord of a fief, but his duty as the man (*baro*) of his lord. In short, the principle of tenure is derived, not from below, but from above. We must work down to it from the lord, not up to it from the land.

We start then from the assemblies of the Norman kings, necessarily, as in every feudal polity, composed of their tenants-in-chief (*barones*), and of no one else. This principle contained the seeds of its own decay, and must have steadily tended to break down from its very first introduction into England.

The worst flaw in this system, and the point that we ought to keep steadily in view, is the harsh and artificial division of society, necessarily involved by its conception. The relation to the lord being its sole standard, it attempted to place on an equality those often of most unequal position, while, conversely, on the same principle, it would sever, by a sharp line, those who socially were in all respects equal. A system so unnatural would be difficult to maintain, even under favourable circumstances, but that difficulty would be

increased when it was introduced into a country of the size of England, at once by the greater number of those who, as *barones*, were all equally (*pares*) members of the *curia* (or *concilium*), and by the greater disproportion between the larger and the smaller tenants-in-chief; between (slightly to anticipate) the *barones majores et minores*. It is easy to understand that, on two grounds, the lesser *barones* would, from the first, keep away, as far as possible, from the *curia*. In the first place, the cost of attendance would be more serious, relatively, to them than to the magnates; in the second, even if they did attend, they would find themselves relatively powerless. Lastly, the feudal polity was, in England, superimposed on the existing native one, which, in its shire system and in its popular courts, maintained a rival organisation.<sup>1</sup> It is, therefore, our task to trace the process by which the feudal theory here broke down in practice.

Let us then recur to our "fixed point," the article I have quoted from the Great Charter, and see what information we can gather from it. Firstly, we learn that the *commune concilium* still consisted in theory of the body of tenants-in-chief; secondly, that attendance had come to be regarded no longer as a burden, but as a right; thirdly, that the Crown, in the issue of the writ, had discovered a means of withholding that right; fourthly, that a definite distinction had been arising between the greater and the lesser tenants-in-chief.

<sup>1</sup> See the *Leges Henrici Primi*, vii. 1: "Sicut antiquâ fuerat institutione formatum," *et seq.*



Now, there are few more difficult questions than the origin of the Writ of Summons. Dr. Stubbs has acutely pointed out that an incident in Becket's life affords evidence of the practice in his day. But there can be no question that it was of earlier origin. It is natural to suppose that for any special assembly (*i.e.*, apart from the three annual ones) special intimations would be addressed at least to the magnates, to secure their attendance. When a full attendance was specially required, as at the Council of Northampton, the king *solemne statuens celebrare consilium, omnes qui de rege tenebant in capite mandari fecit*.<sup>1</sup> Attendance being, for the lesser tenants (*barones minores*) at any rate, a burthen, it would, no doubt, be practically confined to those who, in each case, received the summons. So far, however, the summons was, by no means, a privilege to be valued. But when, on the one hand, the assembly grew in power, after the Norman period, and, on the other, the misgovernment of John made it eager to exercise that power, all this would be changed. It was no longer the object of the Barons to avoid, and of the Crown to enforce, attendance. The contrary, in fact, was now the case, and this being so, the writ of summons suddenly assumed a very real importance.

This, I would suggest, is the turning-point in the process, and, consequently, a matter to be clearly grasped. From being little more than an incidental form, the writ, under these changed

<sup>1</sup> Grimm, *Vita S. Thomæ*, p. 39. The great importance of this passage lies in its identification of the whole body of tenants-in-chief with the "episcopi, comites, barones totius regni," of whom R. de Diceto (c. 536) independently tells us this Council (A.D. 1164) was composed.

circumstances, would become itself the one essential. Now that the *duty* had become the *right* of attendance, the Crown would naturally take advantage of the fact that the assemblies had in practice, as I have above suggested, been only attended by those who had received the writ of summons. Practice and theory, in that practical age, were so conveniently and so persistently confused that it would be an easy step from this to the doctrine that, without a writ of summons, no *baro* could attend.<sup>1</sup>

We have evidence, I contend, in the Great Charter, that the Crown had been endeavouring to use the writ as a means of excluding its opponents from the assembly. This would imply that the writ was already recognized as a necessary condition of attendance. The Crown, then, had succeeded in so far introducing "the thin end of the wedge." But as yet, it was "the thin end" only. The *barones*, while admitting that they could not attend unless summoned, insisted that they all must be summoned. That this view is the correct one, we surely gather from the remarkable passage in Mathew Paris, where we read that, some ten years

<sup>1</sup> Mr. Freeman rightly perceived the importance of the Writ of Summons as a factor in the development of the House of Lords. He writes :—"At least from the Norman conquest onwards, our kings took to summoning particular men to the Assemblies, sometimes in great numbers, sometimes in small. Now it is a universal law that, when a practice of summons comes in, it gradually comes to act as the shutting out of those who are not summoned" (*The Nature and Origin of the House of Lords*, p. 11). But (1) he is inconsistent with himself as to the date when summons came in ; (2) he fails to grasp the all-important distinction between the time when attendance was a privilege, and the time when it was a hardship ; (3) he is absorbed in his fancies about the "freeman," and so fails to confine himself to the tenants-in-chief, who have alone to be considered ; (4) he contends (for present party purposes) that "among the barons, too, he [the king] had a very free choice" (*Ib.* p. 12), thus missing the point.

after the Charter, the *barones*, assembled at Westminster, refused to give their answer to the royal demands :—

*Quod omnes tunc temporis non fuerunt, juxta tenorem Magnæ Cartæ, vocati; et ideo sine paribus suis tunc absentibus, nullum voluerunt tunc responsum dare, vel auxilium concedere vel præstare.*

In the royalist reaction after the death of John, the Crown, this implies, must have revived its attempt to employ the issue of the writ for the exclusion of troublesome opponents. And that such was the case we actually learn from the significant omission of "the fourteenth Article" in the subsequent reissues of the Great Charter. Passing now over forty years, we come to the famous parliament convoked by Simon de Montfort. This I claim as a most important link in the chain of development. By a characteristic stroke the skilful earl seized upon the writ of summons as a means of excluding, in the name of the Crown, all but his own partisans. This was, of course, an extreme case, and presents a striking parallel to those autocratic measures in which the "freedom" of Cromwell surpassed the tyranny of the Stuarts.<sup>1</sup> It proved, however, the growing tendency to admit the control of the Crown over the summons, and so marked a further stage in the transition from tenure.

It is difficult to pronounce confidently on so wide and intricate a question, but it would seem that the eventual success of the Crown, in establishing its control over the writ, must have been due, on the

<sup>1</sup> [See for instance, my demonstration, in 'Colchester and the Commonwealth' (*Eng. Hist. Rev.* 1900, xv, 641-664), of Cromwell's restriction of the borough electorate to his own partisans].

one hand, to its own caution in not venturing to exclude magnates of importance ; and, on the other, to the steady growth of a counter-balancing principle in the doctrine that a man once summoned must be summoned always, and, indeed, as it was ultimately held, his heirs also. This amounted to a virtual compromise, by which the Crown established its control over the original issue of the writ, at the cost of surrendering it for all subsequent issues. When we add to this the oligarchical spirit that characterised the *barones majores*, and that made them readily, so long as their own writs were safe, acquiesce in the disappearance of the lesser tenants, we shall find it easy to understand how the Crown acquired what I may term its right of exclusion among the “barons by tenure,” that is, the tenants-in-chief.

But one cannot fully comprehend the breakdown of tenure, without glancing at the fate of the *barones minores*, or lesser tenants-in-chief. They were, as I have said, from the first the weak point in the system. The feudal theory made the least of the *barones* the equal (or “peer”) of the greatest, on the ground of their common relation to their lord. This unnatural equality could not work in practice. The distinction between the “greater” and the lesser *barones* that we meet with in the Great Charter must have established itself very early. A lamentable amount of erudition has been expended on this really simple distinction. What constituted a *baronia major*—whether size, or privileges, or character of tenure—has been long and keenly discussed. It has been hoped thus to

ascertain the meaning of a *baro major*. A moment's thought should show us that *baronia* was derived from *baro*, not *baro* from *baronia*. Consequently, a *baronia* can have originally meant neither more nor less than the holding of a *baro*. To hold *per baroniam* was, in the first instance, neither more nor less than to hold *ut baro*—as a tenant-in-chief. When, therefore, we read of the *barones majores* or *minores*, we have a right to ask, why should these expressions mean anything else than what they do mean, viz., the “greater” and “lesser” tenants-in-chief? <sup>1</sup> When we speak of “rich and poor,” we do not torture ourselves to ascertain where the division should be drawn, nor do we look upon these terms as technical. <sup>2</sup> And so, taking the words *majores* and *minores* as they stand, we see that, for practical purposes, the line would draw itself. Hence when attendance had become a privilege to the magnates, it would still, for the reasons I have given, be valueless, or even a hardship, to the lesser *barones*, who would gladly dispense with the special summons. Thus we see, in the Great Charter, that while the assembly was still, in theory, co-extensive with the tenants-in-chief, the “general summons” was covering the

<sup>1</sup> [This is the view that was subsequently taken by Pollock and Maitland (*History of English Law*, I, 260), who “regard the distinction as one that is gradually introduced by practice, and one that has no precise theory behind it. The heterogeneous mass of military tenants-in-chief could not hold together as an estate of the realm ;..... but the line between great and small has been drawn in a rough, empirical way, and is not the outcome of any precise principle.” I have noted a curious confirmation of this view in a London deed of Richard I's reign which speaks with similar looseness of “the greater barons (*majores barones*) of the City.”]

<sup>2</sup> [The parallel division of serjeanty into ‘grand’ and ‘petty’ which originated in the Great Charter affords, I think, an illustration of such non-technical classification.]

fact that the "lesser" tenants were already dropping out. The whole process can be better traced in Scotland, where it took place much later. In England, as is well known, the "general summons" to the lesser tenants was addressed to them through the sheriffs. This brought them into fatal contact with *the old shire-organisation*. By that strong organization they were inevitably attracted, to be merged politically, in due course, in the general *corpus* of under-tenants and freeholders. So it was that the "knights of the shire," by becoming identified with the Old English shire-organisation, were severed from those "greater barons," henceforth the "barons" *par excellence*, who duly and easily developed into our House of Lords.

By this definite and striking rupture, tenure, and with it the feudal polity, received a deadly blow. In the ideal system, land was everything, its owner and his blood nothing. Henceforth, tenure having broken down, the writ of summons leaps into prominence, because there is nothing else to take its place.

The final stage in this development, from the territorial to the personal, was reached when the Crown to its power of *exclusion* added that of *inclusion*; that is to say, when in addition to omitting some of those who were tenants-in-chief, it could venture to summon to the assembly some of those who were not. By this the initiative of the Crown became so absolute, that had it not been—*pace* Mr. Freeman—for the counterbalancing influence of the doctrine of the hereditary right to the writ, the House—and this appears to me a

striking thought—might have sunk into a mere formal gathering of the nominees and creatures of sovereign.

To Mr. Freeman the doctrine of “ennobled blood” is notoriously a “silly superstition.” Nay, rather, an abomination. Rejecting “the accidental hereditary element,” he assures us that

It must always be borne in mind that it is the personal summons to Parliament which is the essence of peerage... This is what has made the English peerage so utterly different from any continental nobility. Nobility, so far as it can be said to exist in England at all, is attached to the possession of an hereditary seat in Parliament, and to nothing else. It is the writ of summons to Parliament which is held to “ennoble the blood,” whatever that means. For as every one knows, there is in England no nobility in the sense which the word bears in other lands.<sup>1</sup>

But now that the right to attendance is no longer derived from tenure, it is difficult to say what it can be derived from, if not from “blood.” Those who now hold “Baronies by Writ,” hold them because they are the heirs<sup>2</sup> in blood of the party first summoned. True, as Mr. Freeman urges, that “with us the children of the peer are commoners.” But why is this? Precisely because the House is *feudal* in origin, as its “peers” and “barons” still witness, and, consequently, the feudal principle of primogeniture, the identification of the fief with its actual tenant alone, still dominates our peerage.

We have, then, in our House of Lords, an assembly of feudal derivation, springing from a court of vassals, which has been changed, by the force of

<sup>1</sup> *The Nature and Origin of the House of Lords*, p. 16.

<sup>2</sup> [or co-heirs].

circumstances, into an hereditary peerage, still modified by the feudal principle ; still reminding us, by the evidence of its nomenclature, of its origin in the Norman Conquest ; and still retaining, down to our own days, representatives of the tenure element, whatever modern historians may say, in the non-hereditary—bishops. <sup>1</sup>

On the other hand, in the House of Commons, we have the resultant of the representative system in the Anglo-Saxon local courts, the summary and ultimate development of Teutonic government from below.

<sup>1</sup> " Archiepiscopi, episcopi, et universæ personæ regni, qui de rege tenent in capite, habent possessiones suas de domino rege *sicut baroniam*,...et *sicut barones ceteri* debent interesse judiciis curiæ domini regis cum baronibus," etc.,—*Constitutions of Clarendon*, Cap. xi.

END OF VOL. I







PEERAGE  
AND PEDIGREE



# PEERAGE AND PEDIGREE

## STUDIES IN PEERAGE LAW AND FAMILY HISTORY

BY

J. HORACE ROUND

M.A., LL.D.

VOLUME TWO

LONDON  
JAMES NISBET & CO., LTD.  
& THE ST. CATHERINE PRESS

1910

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## SOME 'SAXON' HOUSES

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*Meaning of 'Saxon descent'—It is claimed by ancient houses or those with 'Saxon' surnames—Origin of these surnames—The Goodwins, Levings, and Chads—Pre-Conquest pedigrees—The Howards—The Temples—The Sneyd pedigree—The Woolryches—Origin of the Audleys—The Stanleys—Master John's dinner-party—The Kingscotes and Berkeleys—The Digbys—The Mitfords—The Ashburnhams—Fitz-Gerals and Carews—The Shirleys—The Thursbys—Polwhele, Trelawny, and Trevelyan—The Dering myth—The pre-Conquest Traffords—Charters antedated—The 'Canute' story demolished—Some vague claims—Proofs wanting—The Wardlaws—The Binghamms—The Pelhams and the Wingfields—The Stourtons—The Wallops, the Chetwodes, the Leighs, and the Stricklands—The Tollemaches and the Wakes—The Jerninghams and the Gowers—Fulford, Gatacre, Hornyold, and Hudleston—The Crofts and the Pilkingtons—Staunton and Swettenham—Hanbury and Salwey—The Berneys and the Wyndhams—Pedigrees in the pulpit—The Welbys—Scrase and Thistlethwayte—The Copingers—Confusion with place-names—Biddulph, Sibthorp and Sandbach—The Tichbornes—A mythical crusader—The Radcliffes—Eleven centuries of Boothbys—'Saxon' surnames—Pennyman and Weld—Wilmot and Gilbert—The Dering concoction—A wondrous pedigree—The first baronet its author—The family "augmentation"—The arms and Saxon motto—Garter Segar's confirmation—The Ethelstons and the Thorolds—The Whatmans and the Godmans—Development of a pedigree—A Saxon house produced—Osbern and Godfrey—The Wolseleys and the wolves—The Lumley pedigree—The Yorkshire Scropes—True pre-Conquest houses—Berkeley and Arden—Origin of the Tracys—Houses of native origin—Alien immigration—Its trace in surnames—Modern immigrants—Our surnames usurped by Jews—Conclusion.*

Apart from those families which claim to have ' come in with the Conqueror ', or at least to be of Norman descent, there are no inconsiderable number who, in one way or another, claim to be older than the Conquest, or, as it is often expressed, " of Saxon origin. " In a few cases a continuous pedigree beginning before the Conquest is definitely put forward ; in others the possession of the family estate is traced, or said to be traced, to the same early period : in some it is more vaguely claimed that a family was established in a certain county long before the Conquest, but in most, perhaps, there is the vague claim to ' Saxon ' " descent " or " origin. "

There is peculiar need for ' clear thinking ' in this department of genealogy, for of these claims many rest on careless or confused thought. It is obvious that their real object is to assert, broadly speaking, that a family was already of importance before the Norman Conquest. But this, of course, is by no means implied in a claim to ' Saxon descent. ' The people of this country, after the Norman Conquest, were officially divided into ' French ' and ' English ' (*Franci et Angli*), of whom the former represented the conquering invaders, Norman for the most part, and the latter the conquered English. These—whom some speak of as ' Saxons ' or ' Anglo-Saxons '—formed the bulk of the population<sup>1</sup> and included naturally the immense majority of the lower orders. There was, therefore, no inducement to assert " Saxon descent " as a distinction, and,

<sup>1</sup> The old Scandinavian element in the east and northeast, and the border population towards the ' Celtic ' fringe were by this time counted as ' English. '

as a matter of fact, the English of the upper and middle classes hastened to bestow upon their children the Christian names of their conquerors,<sup>1</sup> leaving the old native names to those below them, among whom they lingered on for a good while longer.

It will thus be seen that "Saxon origin" is, in itself, no distinction, being probably that of the bulk of our people. But if an actual pedigree can be carried back beyond the gulf of the Conquest, or if the possession of a family estate can be traced to the same remote period, or even if an existing family is so much as mentioned by name before Harold fell, then we should indeed have a most exceptional distinction, and one of which its possessors might well claim to be proud. For, from the historical standpoint, or even from the sociological, it would be no mean achievement for a family to maintain its position, without ruin or extinction, through all the revolutions and vicissitudes of English medieval history since the days when our native kings sat upon their fathers' throne.

When we come to set together our self-styled Saxon houses, the first point, perhaps, to strike us is that, on their own showing, their known history only begins at some time in the 12th century, the century after that which saw the Norman Conquest. Their 'Saxon' origin is a sheer guess: there is absolutely nothing to prove or even to suggest it. The idea seems to have originated in more ways than one. Indeed we can clearly distinguish two groups of families which laid claim to the distinction

<sup>1</sup> Except in the North of England.

on wholly different grounds. The one includes several of our oldest—our very oldest—families, whose proved tenure of their lands begins at so remote a date that they find it difficult to conceive a time when they did *not* hold them. Ignoring the cataclysm of the Norman Conquest, they assume that their own ancestors passed unscathed through its terrors and retained their hereditary estate. One does not see why they should not similarly assume that the English Conquests of the fifth and following centuries left their own forefathers in peaceful possession. But the only family, so far as I know, that has reached this logical conclusion is that of Kelly of Kelly, whose history, as given in *The Landed Gentry*, begins only in the 12th century, but of whom we read that—

“This family,” we quote from their authenticated pedigree, “may look back beyond the (*sic*) Conquest, and derive themselves from the ancient Britons.”

It is indeed the group to which the Kellys belong, the families entitled to what might be termed ‘the blue riband’ of genealogy, that we find conspicuous among the claimants to a pre-Conquest descent. Such houses as Tichborne of Tichborne, Wolseley of Wolseley, Fulford of Fulford, Trafford of Trafford, Polwhele of Polwhele, Ashburnham of Ashburnham, Stonor of Stonor, Trelawny of Trelawny, and so forth,—they have all advanced this claim in one form or another. Whether they can prove that claim or not, these social survivals from a distant past constitute for this country its true *ancienne noblesse*. Puny indeed a modern peerage,—it would till lately have been thought,—and punier

still a modern baronetcy by the side of a tenure in the male line from a period so remote that it is older even than the surname of the house, that surname derived from the estate which still surrounds its home. Where these conditions are fulfilled, the claim might almost be made that, as in the case of a reigning house, the family has no true surname, but is known by the name of its domain. The parallel is not remote.

If genealogists are thus impressed by the long association between a family and its lands, "the man in the street," on the other hand, will probably be most impressed, not by the fact that the tenure is so old, but by the news that surnames are not of older origin. Many absurdities and much fiction would be swept out of family history if only two elementary facts were clearly and firmly grasped. The one is that hereditary surnames were not introduced in this country till after the Norman Conquest—and, in most cases, long after it: the other is that owners of estates derived their surnames from them, and did not, as sometimes seems to be imagined, give to a locality their own name.<sup>1</sup> If only these principles had been grasped and borne in mind, we should never have read in a county history of the first class, in the last century, of Mr. Shobbington, astride upon a bull, riding up from his seat in Buckinghamshire to the court of William the Conqueror, and being authorised (? by Royal licence) to change his name to Bulstrode; nor should we have seen the claim advanced that

<sup>1</sup> I am speaking, of course, of such families and estates as those cited above, and not of cases in which a farm, or other small property, bears the name of a former owner or occupier with the possessive 's' at the end of it.

Boothby in Lincolnshire derived its name from one of the Boothby family a thousand years ago.

The relatively late origin of surnames disposes also at once of the pretensions of what I have termed the other ' group ' of families conspicuous among the claimants to a pre-Conquest descent. They are those whose surnames are formed from certain Christian names, which lingered on (as I explained above) for some time after the Conquest, long enough in some cases to become the origin of surnames. In his history of his own ancient house General Wrottesley has observed that it was largely a matter of chance whether its surname would be finally fixed as Verdon from its Norman *stammhaus*, Wrottesley from its English lordship, or Symons from its ancestor Simon. Surnames indeed must largely have been a matter of chance in their origin. At the time when they were tending to become fixed, —say in the latter part of the 13th century,—there would still be a goodly number of men in the lower orders who had been christened by what we should now term old ' Saxon ' names, which, in the form of a patronymic, might pass into a surname for their sons and their descendants.

Let us open at a venture ' The Domesday of St. Paul's, ' <sup>4</sup> with its lists of peasants and their holdings in 1222. We soon discover that, then as now, fashion was spreading downward. Even peasants were beginning to discard the names of their English forefathers and to bestow upon their children those which had come from abroad with the Normans. We open the volume at the survey

<sup>1</sup> Published by the Camden Society in 1858.

of the Hertfordshire manor of Sandon. On the right hand page (p. 83) we meet with the three sons of a man bearing the ancient name of Æthelward (*Ailwardus*)—a name which had been also borne by “ Fabius Quæstor Patricius Æthelwerdus,” as he styled himself, historian and ealdorman, born of the royal line. They were but humble folk, these brothers, holding 20 acres in bond service apiece; and yet they had received the Norman names of Walter, Ralf, and Geoffrey. On the opposite page we find an even humbler bondsman who holds but five acres, “ Ricardus Godwini.” Let us consider this name. The father has been christened Godwine, which, at the eve of the Conquest, was one of the commonest of English names,<sup>1</sup> but the son receives the Norman name of Richard. The result is that he is known as “ Richard (son of) Godwine.” If the surname is stereotyped at this point, it will become Godwin or Goodwin, and the family may claim “ Saxon origin”: if it is not stereotyped till the next generation, it may become Richards, and the thought of ‘ Saxon origin ’ will not even occur to those who bear that name. And yet the family is the same.

If we now glance at another survey, two or more generations later,<sup>2</sup> we find the same process still going on. Æthelwine (son of) Wulfnoth (*Alwynus Wulnoht*) has a grand ‘ Saxon ’ name, but his son living at Dengemarsh under Edward I has received that of Nicholas (p. 44). William son of Ælfric (*Willelmus Elurich*), of Wye (Kent) has himself

<sup>1</sup> See Ellis, *Introduction to Domesday*, II, 125-9 for its occurrence all over the country.

<sup>2</sup> *Customals of Battle Abbey* (Camden Soc., 1887.)

received a Norman name and has given those of Daniel, William, Jordan and Robert to his sons (p. 104). On the same manor a peasant bearing the ancient royal name of Æthelred ('Eylred') has given that of Simon to his son, who becomes "Simon Eylred" (p. 116). The reader, by this time, will doubtless have seen what a purely accidental thing a 'Saxon' surname is. It tells us only that, when it was formed,—possibly under Edward I (1272-1307),—the family had not yet adopted Christian names of foreign origin, being rather "behind the times" and probably of humble station.

But I would cite, from 'The Customals of Battle' one more illustration, because it is specially to the point. Among the villein peasantry<sup>1</sup> and cottagers at Bromham, Wilts, we find, also under Edward I, "Willelmus Godwyne" (p. 77). Here we again recognise the 'Saxon' Christian name passing into a surname for a man who himself bears on the contrary that of the Norman Duke. He (or the first of his family to bear it) had merely been the son of a man who happened to be christened Godwine and who had no hereditary surname. Pointing out how "absurd it is in itself to mistake the Christian name for a surname and to build a pedigree on the mistake," Mr. Freeman wrote so far back as 1877 that this may even have been done in the case of the great Godwine.

I cannot say that I have seen it with my own eyes, but I have been told by a trustworthy person that there is a

<sup>1</sup> "Halferdplings," i.e. tenants of half a yardland, that is, 15 acres.



book in which the son of Godwine appears as ' Harold, Earl Godwin. ' <sup>1</sup>

Yet, fourteen years after these words were published, there appeared in America a book which would surely have proved to Mr. Freeman " the last straw. " For to this book, *The Goodwins of Hartford, Connecticut*,<sup>2</sup> Dr. Jessopp himself was pleased to contribute what Mr. Goodwin (for whom it was compiled) describes as " a most interesting history of the early Goodwins in East Anglia. " This amazing production begins with the statement that—

The family (*sic*) name GOODWIN is one which has been, and is, very widely distributed not only over England, but over most of the northern countries of Europe, and instances of its occurrence are to be met with in very early times. As far back as the fifth century we meet with it in Germany (*Pertz, Monumenta Germanica*, ix, 189) in the forms GUDWIN and GODWIN, etc.

The phrase " family name " is no mere slip of the writer, for he drives it home, actually writing of those " who can boast of forefathers known a thousand years ago, " etc ! And yet there is worse to come. Not content with thus confusing a Christian name with a surname, Dr. Jessopp plunges into etymology, deriving the first syllable of the name from " the Gothic theme (i) *guda* " or " another theme (ii) *goda*, " so that—

According as it is referred to the first or the second, the meaning of the name *Goodwin* will stand for *good friend* or *God's friend*. In either case it is a name of

<sup>1</sup> *Cont. Rev.* xxx, 25.

<sup>2</sup> The book is fair matter for comment, having been sent out for review.

honour, and tells of worthy ancestry. They who can boast of forefathers known a thousand years ago, as emphatically the *trusty friends*, etc. etc..... or, on the other hand, were known as men whose earnestness, reverence, and devotion marked them above others as *Friends of the Most High*, etc. etc..... they need not look for progenitors whom the caprice of kings may have selected for titular distinction, etc. etc..... They assuredly have noble blood in their veins.

Highly gratifying, no doubt, to Mr. Goodwin of Hartford, Conn., whose utmost efforts, we gather from his book, had failed to determine even the parentage of the first emigrant; but one could hardly imagine that an educated man would write such toady stuff. Does Dr. Jessopp really believe that every baby which happened to receive the name of Godwine at the font had proved itself a "trusty friend" or worthy by its earnestness to be termed a "Friend of the Most High"? It is difficult, no doubt, to know what he does *not* believe, for, but two pages further on, we find him writing of "the College of Heralds, which was founded by Queen Mary," although it is, surely, common knowledge that it was incorporated by Richard III.

Even in writing her sister's life for the *Dictionary of National Biography*, where the utmost care was called for, Dr Jessopp contrived within a few lines to state that the Roman Catholic bishops objected to the oath of allegiance because "it spoke of the sovereign as supreme head of the Church"—although Elizabeth deliberately abandoned that style in order to avoid that objection—and that only one of these prelates, "Watson bishop of Lincoln," could be induced,—and that "at the

eleventh hour"—to crown her.<sup>1</sup> The bishop who did consent to crown her was, of course, Oglethorpe of Carlisle, as is set forth in the notice of him in the same *Dictionary*,<sup>2</sup> to the value of which as a work of reference Dr. Jessopp can hardly be said, by such statements, to contribute. But in this country it is more important to write in a pleasant, popular style than to cultivate what is termed, I believe, a mere pedantic accuracy.<sup>3</sup> It is also a surer way of obtaining national recognition of one's work.

If, however, he does *not* believe that every baby christened Godwine was so named on account of its character, as 'a trusty friend' or as 'a friend of God,' the only alternative is that he does really believe that Godwine was a "family name" a thousand years ago, borne by a race distinguished above others by the admirable qualities it denotes. And as a vague allusion to "the great Earl" follows immediately on his panegyric, one can only infer that he is one of those who have made so ignorant a blunder that Mr. Freeman warned us he had not actually seen it in print with his own eyes.

Of this class of surname he very truly observed:—

In many cases the process has been simply this. A man bears as his surname one of the ancient English

<sup>1</sup> *Op. cit.* xvii, 209.

<sup>2</sup> *Ibid.* xlii, 49.

<sup>3</sup> I desire to emphasize the point that Dr. Jessopp is no mere journalist or writer for popular magazines, but is deemed a serious historical writer. He was even entrusted by the Royal Commission on Historical MSS. with a Report on those of the Buxtons of Shadwell Court, in which he committed himself to the statement that "The earliest progenitor of the ancient family of Buxton of Shadwell Court..... of whom we have any certain knowledge was Peter de Bukton, knight, steward of the household of Henry, Earl of Derby, afterwards King Henry IV," etc. etc. This statement (in an official publication) was effectually demolished by another Norfolk antiquary, who proved "that the alleged descent from Sir Peter de Bukton is absolutely without foundation." (*Ancestor*, No. 6, pp. 11 *et seq.*)

names which have gone out of use as Christian names. He finds in early English history some one who bears that name as a Christian name. He first mistakes the Christian name for a surname, and fancies that the ancient worthy bore the same surname, perhaps an unusual one, as himself. Having got thus far, it would be almost impossible to keep himself back from the next step, to refrain from claiming the ancient worthy as a forefather.<sup>1</sup>

As an instance—"a most grotesque instance"—of this process he selected the pedigree of Levinge, as it then used to appear in ' Burke's Peerage and Baronetage. '

The myth of Leighton is fairly beaten by the myth of Levinge. There is a kind of perverse simplicity about this last legend which makes it specially charming. Here it follows:—

"The family of Levinge is one of great antiquity and traces back its pedigree to Saxon times. The archbishop of Canterbury who crowned CANUTE was Levingus, and, in 1803 (sic) another Levingus was bishop of Worcester," etc.<sup>2</sup>

The ' Burke ' pedigree began at that time with " Thomas Levinge Esq., of Baddesley Ensore, Co. Warwick, living in 1434," but it is not only the ' Saxon ' descent that Mr. Freeman's slashing attack has sent overboard. For the pedigree now begins with the purchaser of Parwick Manor, in 1561.

The above example is so valuable for its bearing on other cases that no apology is needed for repeating Mr. Freeman's comments. He charged " the pedigree-maker " with " laying violent hands on the two eleventh-century Bishops. "

<sup>1</sup> *Cont. Rev.* xxx, 23.

<sup>2</sup> *Ibid.*, p. 23.

Both are real and well-known men..... Only what is there to connect them with the house of Levinge rather than with the house of Snooks? Simply that the hapless pedigree-maker in his ignorance of the ways of the eleventh century, took their Christian name for a surname. There is exactly as much sense to (*sic*) connect the modern family of Levinge with either of these bishops as there is to connect any family called Edwards or Edmunds with any of the Kings who bore their names..... But Leofing, Lyfing, Living—the spellings are of course endless—never was a common Christian name at any time, and it has gone out of use for ages. The pedigree-maker, therefore, did not understand that it was a Christian name at all..... He thought that two bishops of the same name must be of the same family, and that the modern bearer of the same name must be of the same family too.<sup>1</sup>

Another baronet's family, with a precisely similar pedigree, owed to the extinction of the title its escape from Mr. Freeman's lash. The Chad pedigree began, in old editions of ' Burke,' with a canonised saint at its head.

This family is said to deduce its origin from Ceadda or Cedda, a Saxon, who was canonized in 664. The names of many places are derived from St. Chad..... The more immediate ancestor of the baronet, however, was Robert Chad Esq.....b. in 1630.

Here we have the Levinge story again—"only more so." In this case the two bishops were brothers, St. Ceadda (Chad) and St. Cedd. The compiler, having rolled them up neatly into one, leaped gaily to their descendant, a thousand years later, as "the more immediate ancestor" of the family. I think that I have met with ' St. Cedd '

<sup>1</sup> *Ibid*, p. 24.

as a modern surname : it is one of those of which one would like to know the history.

We shall see in the sequel that the same process of providing a family with ' Saxon ' ancestry by confusing a surname with a Christian name is being still employed. One cannot, therefore, too strongly insist or too elaborately demonstrate how intrinsically absurd the process in question is. For the present I will only add the story told me by an officer of the British Museum of how an American tourist specially desired to see a manuscript associated with St. Cuthbert, and explained that it was of peculiar interest to him as he was a Cuthbert himself.

Having now established some general principles, we may attempt a detailed enquiry, which will be greatly facilitated by treating in groups the claims of our ' Saxon ' houses.

Fairly entitled to pride of place are those families which propound a definite pedigree beginning in days before the Conquest. Next to these we may consider the claims of those ancient houses of which I have spoken, whose more or less vague beliefs need not detain us long. Then will come that group of surnames formed from obsolete Christian names which have led their bearers to believe that they have a ' Saxon ' descent. The remaining cases, if any, will be dealt with last of all.

Of those families which still propound a pedigree reaching beyond the Conquest, the worst offenders, one is forced to say, are the Howards, Dukes of Norfolk. One can only term it a lamentable thing

that the official head of The College of Arms should still sanction, year after year, the appearance, in ' Burke's Peerage,' of that grossly fabulous pedigree which has been inserted therein since 1880, and which traces the origin of his house to " Howard or Hereward living in the reign of King Edgar 957 to 973. " An actual portrait of this imaginary ancestor adorns the magnificent heraldic volume, compiled by Lilly, Rougedragon, in 1638, and now in the possession of the Duke of Norfolk.<sup>1</sup>

Two families, however, have flown at higher game in claiming for themselves descent in the male line from the ' Saxon ' earls of Mercia. They are those of Temple and of Sneyd. In ' Burke's Peerage ' the Temple pedigree used to be " deduced " from Earl Leofric, although from him it sprang at a bound to " Peter Temple Esq. in the latter years of King Edward the sixth. " This, however, is one of those tales that Mr. Freeman's savage attack<sup>2</sup> fairly hounded out of ' Burke. ' It had been fully exposed years before,<sup>3</sup> and Mr. Chester Waters subsequently observed that

The Temples of Stowe were, before the suppression of the monasteries, yeomen and tenants of the Abbot of

<sup>1</sup> It was formerly in the possession of Lord Northampton (see 3rd Report Hist. MSS, pp. xvii, 209). This volume contains transcripts of deeds valuable for the immediate ancestry of Sir William Howard the judge, *temp.* Edward I. the real founder of the family. See my *Studies in Peerage and Family History* for the Howards' Saxon pedigree and its repeated exposure. It will be shown below that a similar volume was compiled by the same herald for the Digby family.

<sup>2</sup> *Cont. Rev.* (1877) XXX, 38-9.

<sup>3</sup> *Herald and Genealogist* (1866) III, 385-410. There would seem to have been good reason for skipping the intermediate descent, if the family traced its pedigree to Earl Leofric through his third son, who, " living in the reign of William the Conqueror, was wrote Henry del Temple " !

Oseney. Peter Temple acquired abbey lands and had arms granted to him in 1567. The legend of their descent from the Saxon Earls of Mercia is annually repeated in that gorgeous repertory of genealogical mythology, Burke's *Peerage and Baronetage*.<sup>1</sup>

This, however, did not prevent the late Sir Richard Temple<sup>2</sup> from bestowing, after Mr. Freeman's onslaught, the name of Godiva on one of his daughters, as Sir Grenville 'Leofric' Temple, of the other family, had already done. And Sir Richard's example has been followed in the next generation.

The legend, indeed, can itself be eradicated from works of reference, but the arms, unfortunately, cannot. I would specially invite attention to their actual evolution as typical of a Tudor practice. As with Spenser and as with Smith, the Temples soon relegated to the second and third quarters the coat granted or confirmed to them,<sup>3</sup> and placed in the first and fourth the fabulous coat of the earls of Mercia! In my *Studies in Peerage and Family History* (1901) I wrote as follows:—

'Burke' succeeds in stultifying itself, for the arms, under Temple of Stowe, 'Baronet,' are given as 'Quarterly 1st and 4th or, an eagle displayed sa., bearing the arms of the Heptarch [!] Kingdom of Mercia, which have been borne by the family since their ancestors were earls of that country'! This statement is actually made at

<sup>1</sup> p. 39 of an edition which bears the dates 1882 and 1887 on the title page. Mr. Waters cruelly pointed out that foundlings from the Temple also received the name of 'Temple,' and sarcastically enquired "how many of their descendants in this genealogical age confidently trace their origin from Leofric and Godiva, the mythical ancestors of all the Temples."

<sup>2</sup> Son of Mr. John Dicken, who took the name and arms of Temple only by royal License in 1796.

<sup>3</sup> It appears to be of somewhat doubtful origin (see the *Herald and Genealogist* article.)



the foot of a pedigree beginning somewhat humbly in the days of Henry III.<sup>1</sup>

Burke, however, impenitent, or perhaps merely indolent, continues to this day to repeat this monstrous fiction.

I pass to the family of Sneyd. Theirs is a very different claim from that of the family of Temple. Their descent from the earls of Mercia is no mere clumsy concoction obviously false on the face of it, but a perfectly plausible pedigree, of which every step is given. It is only its tremendous character that takes away one's breath. When we read in 'Burke's Landed Gentry' of one branch of this amazing house that its head is "29th in direct male descent from Eadulf (a noble of Wessex) and his wife Ælfwyn, dau. and heir of Æthelred, the last king of Mercia by Æthelflæd, dau. of Alfred the Great," one wonders if any pedigree in England can approach it in length or splendour. Cold history, it is true, reduces 'King' Æthelred to the position of an Ealdorman under Alfred the Great; but of his wife Æthelflæd, "the most remarkable woman of the whole Anglo-Saxon era," that stormer of strongholds and builder of forts,—apostrophised in awe as "Elfreda potens, O terror virgo virorum,"—one can only speak with the respect due to her who forms the connecting link between the 'Boadicea' of the pageants and the modern 'suffragette.'

<sup>1</sup> I added a footnote that "these arms, invented by some herald, must be recognised as valid at the College, for Mr. Fox-Davies assigned them to Sir Richard Temple of the Nash, and blazoned them, under the Duchess of Buckingham, as borne 'for Leofric' (*Armorial Families*, 1st Ed., pp. 961, 962.) though his own Introduction denies the use of armorial bearings in Leofric's time."

The 'authorities' for this wondrous pedigree together with its opening portion are thus given in 'Burke.'

The following pedigree of the ancient family of SNEYD is compiled from the following authorities: SLEIGH's *History of Leek*; WARD's *History of Stoke on Trent*; *Domesday, Staffordshire and Cheshire*; *Ancient Pedigree of Trent-hams of Rocester*; and ORMEROD's *History of Cheshire*; and from MSS. in the muniment rooms at Keele and Ashcombe and the Hulton Abbey MSS.

EADULF VEL EADWULF, son of ORDGAR, ealdorman of the Defnsætas (Devon & Cornwall) m. Ælfwyn, dau. and heir of Æthelred, last king and 1st earl of Mercia, by Æthelflæd, dau. of Alfred the Great, and had a son

LEOFWINE, Earl of Mercia, who m. Alwara, dau. of Æthelstan, Duke of the East Angles, and had, with other issue, a 4th son,

GODWINE, tainus regis, lord according to Domesday of many manors in Staffordshire and Cheshire. He had a son

WULFRIC CILD VEL ULURIC, lord of Alditheley, Balterley, and many other manors in Staffordshire and Cheshire, according to Domesday, m. a daughter of William Count of Arques, son of Richard II, Duke of Normandy, and had, with other issue, an eldest son,

GAMEL, tainus regis, Lord of Alditheley, Talke and Balterley, etc. in the County of Stafford, Mottram Andrew, Cedde, etc. in the co. of Chester, at the Domesday survey, had issue by his wife (probably a Verdun)

ADAM DE ALDITHELEY (le [*sic*] Verdun), lord of Alditheley, Balterley etc. in the co. of Stafford. He was the brother of Robert de Stanley vel Stonlegh, Sheriff of Staffordshire 1123-1128. He was father of

LYNULPHUS [*sic*] de Alditheley, son and heir, sheriff of Cheshire *temp.* King Stephen, m. Mabel de Stonlegh vel Stanley, dau. of Henry de Stanley, and had issue

I. ADAM DE ALDITHELEY, of Alditheley, father of HENRY DE ALDITHELEY, lord of large estate in Staffordshire, Cheshire, etc., founder of Hulton Abbey A.D. 1223, d. 1286.

II. ROBERT DE ALDITHELEY, of whom we treat.

It is alleged that this Robert took the surname of Sneyd from the lands he held there, and that from him the Sneyds descend. But what concerns me here is the early portion of the pedigree, the descent from the Earls of Mercia.

It will simplify matters if I say at once that the first paragraph must all be rejected, because Leofwine's parentage (as Mr. Freeman observed) has not been ascertained. As for the rest, the sole 'authority' on which the pedigree rests is that of "the Hulton Abbey MSS." Now these consist, it is no secret,<sup>1</sup> of certain pieces of parchment which were purchased by a member of the Sneyd family as genuine within the last half century at most. Their *provenance* is quite uncertain and their genuineness is gravely impugned.

In 1893 General Wrottesley, perceiving the importance of these documents, if genuine, went into the matter with great care and had photographs submitted to him. The documents do not profess to be the original charters, but are transcripts or rather recitals of them, both sides of the parchments being written on, as if they came from the cartulary or register of a religious house. On the ground of the handwriting and of erroneous abbreviations, as well as from internal evidence, the General pronounced them to be "forgeries." He

<sup>1</sup> My authority for this statement and for others below is Major General the Hon. George Wrottesley, who had full knowledge of the facts.

subsequently showed them to two officers of the Public Record Office, who stated that, in their opinion, "They were very clumsy forgeries."

Internal evidence alone is enough, I consider, to condemn them, though only to the satisfaction, perhaps, of an expert. To those who, like myself, have made a study of such things, the most suspicious feature about them is that they are so obviously constructed for a genealogical purpose. Four charters prove, between them, a pedigree of ten generations! The first, however, is the most important, and also the most startling.

# I.

"Henricus de Alditeleghe pro salute anime sue et Bertheie uxoris sue et Ade patris sui et Petronelle matris sue et Liulfi avi sui et Mabile avie sue et Ade proavi sui et Gameli abavi sui et Wulfrici Cild atavi sui et Godwini tritavi sui et Leofwini Comitis patris Godwini et pro salute animarum antecessorum et successorum dedit et concessit deo et Sancte Marie et abbati et monachis de Hulton VI caruc' terre in decanatibus Novi Castri et de Alúeton. Et dedit predictis Monachis annuam pensionem X marcarum de ecclesia de Alditeleghe. Harum rerum fuerunt testes Nicholaus de Verdun. Willelmus Pantun. Willelmus de Alditelele. "

'The man in the street' must take it from the expert "that these things do not happen." Benefactors did not recite their pedigree for the convenience of remote descendants. Alexander Swereford set himself, at just about the same time, to recite, as a matter of historical interest, the descent of King Henry III from "Adam son of the living God."<sup>1</sup> But he did so in simple biblical

<sup>1</sup> *Red Book of the Exchequer*, pp. 3-4.

fashion, without borrowing a *tritavus* from Plautus or displaying his acquaintance with the niceties of classical genealogy. For Henry " de Alditheley " the strain of doing so must have proved too severe ; for it led him to give the name of his own mother as ' Parnelle ' (*Petronilla*), although it happened to be Emma.<sup>1</sup>

Domesday, I ought to explain, does not prove a single link of the pedigree ; and as Godwine and Wulfric are two of the commonest English names in the record, it is virtually impossible to distinguish between the bearers of such names. The survey, indeed, does mention one Wulfric ' Cild,' but not as the lord of manors " in Staffordshire and Cheshire ; " he is named among those who had enjoyed special privileges in Nottinghamshire and Derbyshire (fo. 280 b.) Again, it would seem that Earl Leofwine actually had a son Godwine, but, as he predeceased his brother, earl Leofric, we should not expect to find his name. Indeed, all that we know of him is found in Heming's Worcester Cartulary,<sup>2</sup> where we read that at his death (before 1057) he restored Salwarpe (near Droitwich) to the church, but that his son and successor Æthelwine (not Wulfric) kept possession of it by the help of his uncle, earl Leofric.<sup>3</sup>

' Gamel ' was by no means an uncommon name

<sup>1</sup> I am indebted to General Wrottesley for this fatal flaw. Testing his criticism, I have found it sound. It is clearly proved by a suit of 12 Henry III for the manor of Horton, in conjunction with other evidence, that Henry was son of Adam de Audley by Emma daughter of Ralf son of Orm of Darlaston, and that he succeeded an elder brother Adam (unmentioned in the pedigree and the deeds).

<sup>2</sup> Ed. Hearne, I, 259-260.

<sup>3</sup> He appears to be the " Ælwin[us] cilt " who is entered in Domesday as its holder before the Conquest.

in the ' Danish ' district of England : it was frequent, indeed, in Lincolnshire and Yorkshire. But there is no question that a single Gamel held lands in Audley, Balterley, and Talk (in Audley) as a Thegn in 1086. Who his father was, or by whom he was succeeded, we do not know. A deed which forms the sheet anchor of the Audley and Stanley pedigrees will show us Gamel's lands in the hands of a single holder a century or so, perhaps, after the Domesday Survey. To this we shall come in due course ; but, for the present, we must keep to Sneyd.

It will not be necessary to print all the four documents on which the pedigree rests, but the second must be given because it forms the correlative of the one that is printed above. It is intended to prove that Richard de Sned was, like Henry de Audley, a grandson, paternally of that Liulf ' de Alditheley,' the one important man whom we have to keep in view. Like its predecessor, this document is suspiciously rich, it will be seen, in genealogical information.

## II.

" Ricardus de Sned filius Roberti de Alditeley pro anima sua et Rosie uxoris sue filii Henrici de Praers et Roberti patris sui et Johanne matris sue et Liulfi de Alditeley avi sui et Mabilie avie sue et pro animabus antecessorum et successorum suorum dedit assensu Henrici de Alditeley deo et Sancte Marie et Abbati et Monachis de Hulton landam que vocatur Sithefeld<sup>1</sup> juxta boscum de Sned. Hiis Testibus : Willelmo de Auditheg

<sup>1</sup> Can this name have been suggested by the fact that a scythe is the charge on the Sneyd coat ? It is said, however, to be derived from the Praers family.

(*sic*), Roberto de Praers, Willelmo de Chetelton, Willelmo de Uppeclau, Benedicto de Coudray, Ricardo clerico, Ricardo Griffin, Johanne de Bec, et multis aliis.

Predicta landa jacet in Bosco de Sned quem Henricus de Alditeley dedit deo et Sancte Marie et abbati et Monachis de Hulton.

Ricardus de Sned sepultus festo sancti Mathei Apostoli anno regni Regis Henrici filii Regis Johannis vicesimo tercio."<sup>1</sup>

What concerns me in this paper is to show that there is no evidence for the descent in the male line (alleged in the pedigree) of the Audleys from the earls of Mercia, or rather that the evidence consists only of documents concocted for the purpose. Whether the Sneyds (as is now alleged) are descended in the male line from the Audleys is a wholly distinct question which does not immediately concern us. It is, however, the conviction of General Wrottesley that even for this alleged descent there is no trustworthy evidence, and that the earliest authentic mention of the family is in 1298, when the Inquisition taken on the death of Nicholas de Audley reveals the first Sneyd in a somewhat humble position as the socage tenant of a messuage and 24 acres of land in Tunstall.<sup>2</sup> In the next Inquisition (1307) the same 'Thomas de Snedde' recurs with the same holding, together with an Andrew and a John 'de Snedde,' of whom the former holds a messuage and 15½ acres, both

<sup>1</sup> i. e. 1239. I have had to take the text of both these Sneyd documents from copies made by a member of the family for General Wrottesley.

<sup>2</sup> General Wrottesley writes to me on this subject: "I have not met with any Sneyd anterior to the socage tenants named in the Audley Inquisitions *temp.* Edw. I." These Inquisitions are published in Vol. XI. (New Series) of the Salt Society's Collections.

in Tunstall. Such is the inexorable witness of the Public Records.

There might here be an end of the matter if it only concerned the family of Sneyd; but it concerns at least three others, and one of these is the historic house of the Stanleys, earls of Derby.

I will deal, however, first with that of Wolrich, because its claim (through Henry de Audley) to precisely the same descent from the Earls of Mercia was published in Burke's *History of the Commoners* (IV, 757) so far back as 1838, which proves that this descent is no recent invention.<sup>1</sup> It is there similarly carried up to "Ethelred, last king and first Duke of Mercia," etc. etc., but is a good deal developed both before and after the Conquest. The Domesday Gamel becomes "Gamel de Tettesworth," and is provided with three brothers, who become the patriarchs of yet other houses. The Wolrich pedigree itself is traced from Adam, an alleged third son of Henry de Audley, who, instead of being styled, as we might expect, Adam Fitz Henry (or Adam de Audley) was named, we learn,—presumably from one of his supposed ancestors—"Sir Adam Fitz Wolfric or Wolriche knt. of Gretton, Wenlock, and Wickshall."

Nowadays, however, the Woolrych pedigree, in Burke's *Landed Gentry*, begins abruptly with this Adam, of whom we read that—

<sup>1</sup> A curious MS. pedigree of the Trenthams of Rocester, of which I have seen a copy, traces the descent of "the worshipfull Francis Trentham of Rocester," through his great-grandmother, Jane Sneyd, from "Leofwine, Earl of Mercia and so.... from Alfred the Great." As the grandfather and namesake of this Francis was aged 19 at the 1583 visitation, this pedigree may be of about the middle of the 17th century. But where is its original?



This very ancient Shropshire family is descended from Sir Adam Wolryche, knt. *temp.* Henry III he was admitted of the Roll of Guild Merchants of Shrewsbury 1231, by the Saxon name ADAM WULFRIC.

A humble and suitable name this for a Shrewsbury merchant,<sup>1</sup> but not one under which we should expect to find "Sir Adam Wolryche knt.," and even less, a son of Henry de Audley, a descendant of the earls of Mercia.<sup>2</sup>

*Exeunt*, therefore, Sneyd and Wolrich as descendants of the house of Audley and, through it, claimants to a share in the finest pedigree in England. There remain the house of Audley itself and, more important than all, the Stanleys, Earls of Derby.

It was practically, under Henry III that the Audleys, in the person of Henry, rose to wealth and importance.<sup>3</sup> They became Lords Audley and eventually Earls of Gloucester; and their native origin curiously illustrates the resilience of the English race. It is also a singular coincidence that "James of Aldithel" is a witness to what would seem to be the earliest Royal proclamation issued in the English tongue.<sup>4</sup>

Audley—the 'Aldidelege' of Domesday—from which they derived their name, lies in the north-

<sup>1</sup> The admission Roll has been printed by the Shropshire Archæological Society. The name is "Adam Wulfricus" simply; the date 1232; and the names among which it is found are obviously those of men in a lowly position.

<sup>2</sup> I take this opportunity of observing that, in my experience, a pedigree which is traced up, as in this case, to an alleged cadet, should always be most narrowly scrutinised, as bygone genealogists were apt to foist such cadets into a family without any ground for doing so.

<sup>3</sup> See the long list of his lands (1227) in *Calendar of Charter Rolls*, I. 36-7.

<sup>4</sup> That of Oct. 18, 1257, announcing the King's adhesion to the Provisions of Oxford.

west of Staffordshire, near the Cheshire border. Adjoining it on the west is Balterley, and on the north-east, Talk (on the hill).

"The Moorlands," in the western corner of which these places lay, were a mainly rocky, barren region, presenting few attractions to Norman greed. In it, therefore, there lingered, even at the time of Domesday, a group of English thegns. Of these one was Gamel, who held at the above places. He is identified in the Sneyd pedigree with a Gamel who held far to the north at Mottram (in Prestbury), but I know of nothing to support this, which seems, indeed, at direct variance with the manorial descents. Mr. Eyton, however, appears to have formed the strange theory that they were not only one, but a son of Grifin (? "Rex Grifinus") T.R.E., and he added that "The Pipe Roll of 1130 shows Gamel to have been recently slain by Lyulph de Audley, whose posterity enjoyed Gamel's three estates".<sup>1</sup> This is a statement which is frequently and confidently made, but it involves two suppositions, both of them, surely, hazardous.<sup>2</sup>

We have seen how Liulf makes his appearance in the 'Landed Gentry' pedigree of Sneyd: we will now see how 'Burke's Peerage' enters him under 'Derby.'

ADAM DE ALDITHLEY attended duke WILLIAM to England and was accompanied from Aldithley, in Normandy,

<sup>1</sup> *Staffordshire Domesday*, p. 76.

<sup>2</sup> The first is that the "Aldredeslega" of the Roll represents Audley. This it certainly does not do, so that one would be forced to assume that the scribe had written it in error for 'Aldidelege' or some such form. The other is that the slain Gamel was the man of that name who had held Audley 44 years before. This obviously is a mere conjecture.

by his sons Lydulph and Adam de Aldithley, and had large possessions conferred upon him by the CONQUEROR.

LYDULPH, eldest son, was father of Adam de Aldithley, which Adam was possessed in right of his wife, Mabella, dau. and heir of Henry Stanley de Stoneley (!) of the manor of Stoneley and Balterley co. Stafford (Dugdale's *Baronage*) and was ancestor of the Barons Audley, of Healey Castle, co. Stafford ; and

ADAM DE ALDITHLEY, second son, was father of WILLIAM DE ALDITHLEY, to whom Thomas Stanley, of Stafford, kinsman of Henry Stanley, of Stoneley, gave his only dau. and heir, Joan, and with her, as a marriage portion, the manor of Thalk, co. Stafford : he having exchanged Thalk for Stoneley, and half the manor of Balterley, with his cousin Adam, made choice of Stoneley for his seat, and in honour of his lady, and the great antiquity of her family (of noble Saxon descent), who flourished in England many years before the Conquest, assumed the surname of

STANLEY, and became the immediate founder of the Stanleys.

Here one need not be a critic : one has only to act as showman. Side by side we place those productions of Burke Brothers, The ' Landed Gentry ' and the ' Peerage. ' <sup>1</sup> Both they tell us, are authoritative works : in both we find the latest fruit of genealogical research. Excellent. Let us, therefore, now deal with that gallant family party which landed at Pevensey Bay on that eventful Thursday in 1086.

They came, says ' Burke's Peerage, ' " from Aldithley in Normandy " ; but, if so, they must

<sup>1</sup> There lie before me the 1894 edition of the ' Landed Gentry ' " edited by his sons," and the 1899 edition of the ' Peerage ' " edited by his son " (Somer set Herald).

have brought it with them. For "Aldithley," according to the 'Landed Gentry,' lay "in co. Stafford," and was the home of Adam and 'Lynulph,' as it had been of their fathers before them. 'Lydulph,' again, according to the 'Peerage' arrived in 1066; but the 'Landed Gentry' shows us his grandfather Gamel in possession of the family seat twenty years later (1086). But Liulf, however spelt, could afford to wait: according to the same authority, he was sheriff of Cheshire under Stephen (1135-1154), when he doubtless delighted the county with his personal reminiscences of William's great victory in 1066. It was he, according to the 'Landed Gentry,' who married the 'Stanley' heiress: not at all, says the 'Peerage'; it was his son Adam. As both these works, we know, are authoritative, there would seem to have been a clear case for the ecclesiastical courts.

The Sneyds, it would appear, jealously refused to share even with the earls of Derby their great Mercian descent; for the 'Landed Gentry,' as it lies before me, ignores the Stanleys' ancestor.<sup>1</sup>

On the other hand, the earls of Derby, greedy for Norman origin, could hardly claim, at the same time, to be sprung from Mercian earls. It is true that both Liulf and 'Alditheley' are distinctively English names, but 'Burke' is obsequiously ready

<sup>1</sup> He has been subsequently, but unfortunately, introduced under 'Lynulphus de Alditheley,' of whom we now read that he married a daughter of "Henry de Stanley whose younger brother Adam de Alditheley, was father of William de Stanley, ancestor of the present Earl of Derby," This makes 'confusion worse confounded.'

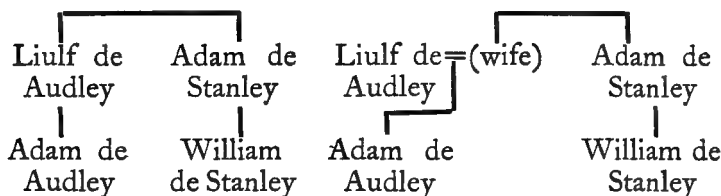
to recognise them both as Norman. The grossness of the error has been pointed out, and not only by myself : but why trouble to remove mere error from one's text ? It is infinitely less trouble to assure the public that you do so ; and, as for the critics, *eant ad inferos*.

Now the real explanation of all this contradiction and confusion is to be found in a single deed, which constitutes, as I have expressed it, the sheet anchor of the pedigree. Around its actual evidence has been woven a fabric of fiction, and the whole resultant production has moved up or down in time according to the date assigned to the deed. Dugdale, who had seen this deed, gives its purport in his *Baronage* (II, 247), and a transcript of it is preserved among his MSS. This runs as follows.

Adam de Aldeleghe omnibus hominibus suis et amicis Francis et Anglicis salutem. Sciatis quod ego Adam filius Lydulfi de Aldeleghe do et concedo Willelmo de Standleghe filio Ade de Standleghe avunculi mei totam Standleghe cum omnibus pertinentiis suis libere et quiete de omnibus que ad me pertinent pro duodecim denariis annuatim reddendis etc., ipse et heredes sui mihi et heredibus meis. Præterea do eidem Willelmo dimidiam Balterlegam et servitium Lidulfi de toto quod de me tenuit. Et si ego vel heres meus non possimus warantizare illi vel heredibus Standlegam, ego vel heredes mei dabimus illis quantum etc. Et hanc predictam terram de Baltreleghe tenebunt pro forinsecum servitium faciendo. Has autem predictas terras do ei et heredibus suis in escambium propter villam de Talc, tenend' et habend' de me et heredibus meis etc. Hiis testibus : Henrico de Preyes ; Roberto de Aldeleghe ; Ada capellano ; Rogero de Paynell ; Ricardo fratre suo ; Joceranno ; Philippo

capellano de Lec ; Willelmo.... Ada fratre Willelmi de Standlegh ; Thoma fratre ejus etc.<sup>1</sup>

As the word ' avunculus ' is ambiguous and may mean the brother of a father or of a mother, this deed is compatible with either of these pedigrees :—



But, as William de Stanley, we see, was already in possession of Talk (on the Hill), which, with Audley and half Balterley, formed the Domesday holding of Gamel, it is reasonable to suppose that Liulf and Adam were brothers, between whom that holding had been divided.

It will be observed that this deed does not mention Adam, the alleged father of Liulf, and, although Eyton assumed his existence and even asserts that he divided his holding between his two sons,<sup>2</sup> General Wrottesley assures me that he is "a complete myth."

Liulf himself was a real man, and, as he must have been contemporary with Ralf Fitz Orme of Darlaston (whose daughter married his son), he must have flourished about King Stephen's time. There is grim humour in the thought that the compilers of the Stanley pedigree, anxious to find a Conquest ancestor, in the male line, for the earls,

<sup>1</sup> This text was kindly supplied to me by General Wrottesley. It is obvious that the transcript has some small inaccuracies, but they do not affect the purport of the deed.

<sup>2</sup> *Staffordshire Domesday*, p. 90.

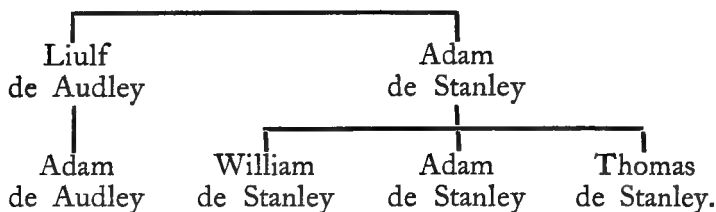
pitched upon this Liulf with his essentially English name, turned him into a Norman, and threw him back to the Conquest. They then further made him contemporary with a Henry and a Thomas Stanley, whose essentially Norman names proved them to be native English and to be members of a "family of noble Saxon descent, who flourished in England many years before the Conquest." All this we read in 'Burke,' and it is dear to the heart of the newspaper paragraphist, who will tell us how a quite impossible "William Stanley of Stanley was a powerful man in England fifty years before the battle of Hastings." <sup>1</sup>

The glory of the Norman Liulf has of late been somewhat dimmed by the splendour of the Saxon Stanleys, although the latter are only claimed as ancestors in the female line of the earls. There was, of course, no such family, nor can Henry or Thomas Stanley, so far as I know, be discovered. We can only find a Robert de Stanley, sheriff of Staffordshire (1123-1128), whose identity has not been determined. Stanley itself, a township in Leek, lay in the Staffordshire 'Morlands,' some eight or nine miles eastward of Audley, and, therefore, at some distance from Gamel's compact holding. It is not even named in Domesday, but has been supposed to be there included under Endon, its neighbour. There is nothing to show how it came to pass into the hands of the Audleys' ancestor; and the difficulty is increased by his younger brother (as he is assumed to be) Adam taking his surname from the place, though the deed

<sup>1</sup> *Evening Standard and St James' Gazette*, 5 Dec. 1905.

shows that it belonged to his nephew and, presumably, to his nephew's father.<sup>1</sup>

The pedigree established by the above deed may be set forth as follows :—



But this pedigree is complicated, though in an interesting fashion, by a series of deeds in the Kenilworth cartulary, for my knowledge of which I am indebted to the kindness of Mr. H. J. Ellis.<sup>2</sup> Kenilworth Priory was a Clinton foundation, and these deeds exhibit the Audleys in close connexion with Clintons and Verdens. Norman de Verdon had married Lesceline daughter of Geoffrey de Clinton, the chamberlain, and the Audleys seem to have been connected (though it is not known how) with the Verdens, of whom they held Audley, and whose arms they bore with the tinctures differenced. When Bertram de Verdon was sheriff of Warwickshire and Leicestershire in 1180, Adam de 'Aldithelega' (or 'Aldedelega') was one of his two deputies,<sup>3</sup> and the latter witnesses a charter of the former to Croxden Abbey, Staffs.<sup>4</sup> We find ourselves on sure ground with that

<sup>1</sup> It should be observed that Adam, the grantor, recognised his title of Stanley to be somewhat doubtful, for he admits, in the deed, a doubt as to his power to "warrant" it to the grantee.

<sup>2</sup> Of the Department of MSS., Brit. Mus.

<sup>3</sup> *Pipe Roll*, 26 Hen. II, p. 97. His mother Lesceline is mentioned on the Roll as still living.

<sup>4</sup> Cott. chart. XI, 7.



“ Adam de Alditheleg(a) ”, who buried his wife Emma in Kenilworth Priory,<sup>1</sup> for they, we have seen, were the parents of Henry de Audley. Adam granted on this occasion a small endowment in Redfen (‘Wridfen’). It is round this Adam, as it seems to me, that the Kenilworth charters revolve;<sup>2</sup> and the “ L(iulfus) frater Ade de Aldithel(ega) ” who is a witness to two of Henry de Clinton’s charters concerning Redfen must therefore be a brother (?unknown) of his—apparently a younger brother—and not his father Liulf. This conclusion is strengthened by “ Adam filius Ade de Aldithel(ega) ” attesting one of these charters as well as Adam himself, for we know from other evidence that Adam had a son of his own name, senior to Henry, who obtained, doubtless through Verdon influence, lands in Ireland.

The deed of family arrangement transcribed above provides, we saw, that Stanley itself was to be held by annual payment of twelvepence from the Stanleys to the Audleys, and, as General Wrottesley has pointed out to me, it is again to the Inquisitions taken on the death of the Audleys that we must have recourse to learn the names of those by whom Stanley was held. Now the Inquisition of 1298 shows us a Walter de Stanley as then paying this rent, and, although he does not figure in the pedigree of the earls of Derby, he must have been the holder of Stanley at the time. A Walter de Stanley also occurs on a Staffordshire Assize Roll of 56 Hen. III (1271-2). It is

<sup>1</sup> Harl. MS. 3650, fos. 66, 71 b. Compare p. 21 above.

<sup>2</sup> *Ibid.* fos. 8 b., 62, 65, 65 b, 66, 71 b. Mr. Ellis dates these charters “ late Hen. II,” which harmonises well.

alleged by Dugdale in his *Baronage* that, at the time of his writing, the Staffordshire Stanley still belonged to the Stanleys of Hooton, Cheshire, of whom the earls of Derby were cadets. If he was rightly informed, and the estate had really descended to them, the fact at once confirms the descent they claimed.

But between the deed of family arrangement under Henry II and the first appearance of the Stanleys in Cheshire there is a gap of not less than a century to be bridged, and there seems to be very little evidence for the intervening links. Indeed, the existence of Walter de Stanley throws distinct doubts on the accepted details of the pedigree. The turning-point in the history of the family was the marriage with the heiress of Baumville, which brought them into Cheshire and gave them the forestership of Wirral.

A plea-roll of 35 Edw. III (1361-2) proves that William de Stanley made good his right to this office<sup>1</sup> in virtue of the marriage of his grandfather William with Joan eldest daughter and co-heiress of Philip de Baumville, hereditary forester of Wirral.<sup>2</sup> And a Chester plea-roll of 4 Edw. II (1310-1311) records the conviction of the latter William, with his son John, for oppression as forester of Wirral, and his office was taken from him,<sup>3</sup> though afterwards restored. He was, doubtless, the William de Stanley who was paying the twelvenpence

<sup>1</sup> i. e. "to appoint six serjeants, who were to be maintained by the villis within the forest, also the right of hunting the hare and fox within the forest and other franchises specified" (Wrottesley's *Pedigrees from Plea Rolls*, 149.)

<sup>2</sup> It is presumed that the stags' heads on the bend in the Stanley coat refer to their forest office.

<sup>3</sup> See also the chamberlain's accounts for 1303.

rent for Stanley at the death of Thomas de Audley in 1307.

The touch of human interest in all this is given by the Inquisition on the death of Philip de Baumville (March 1283-4), which thus records the marriage of William de Stanley with his daughter.

William de Stanleghe contracted marriage with the abovesaid Joan, saying, ' Joan I give thee my troth to have and hold thee for my lawful wife to my life's end, ' and the said Joan gave him her troth in like words ; it was before the death of the said Philip, on Sunday after St. Matthew two years ago, before Adam de Hooton and Dawe de Coupland, at the church of Asteburi ; <sup>1</sup> for the said Philip, his wife and family, were at a banquet (*convivium*) of Master John de Stanleghe, and Joan, doubting that her father would marry her to a son of her step-mother, on that occasion accepted the said William as her husband. <sup>2</sup>

It is to be observed that Master John (after whom William may have called his son John) is omitted from the Stanley pedigree (as given) no less than Walter, who, we have seen, must have held Stanley in 1298.

From the Baumville match, however, the pedigree is clear down to the two brothers Sir William and Sir John de Stanley, of whom the elder married the Hooton heiress, and founded the Stanleys of Hooton, <sup>3</sup> afterwards Baronets, while Sir John, the

<sup>1</sup> The name of the Church is important, for Astbury, though in Cheshire, is only just across the border of that part of Staffs. where dwelt the Audleys and Stanleys.

<sup>2</sup> *Calendar of Inquisitions*, Vol. II, p. 306. Joan was the eldest daughter, but it is not clear whether the forestership, as an office (and therefore impartible) descended to her alone.

<sup>3</sup> " We come to Hooton, a goodly ancient manor, which ever since the reign of Edward II hath been the seat of the Stanleys of Hooton, gentlemen

younger, married the Lathom heiress and was ancestor of the Earls of Derby. The upshot, then, of the whole matter is that the Stanleys can claim descent, not from Liulf de Audley, but from his brother Adam; that these brothers were living under Stephen and Henry II; and that Liulf's name proves them to have been of native English descent. But beyond that we cannot go.

The reader, probably, will not be sorry that there are houses with pedigrees alleged to begin in England before the Conquest, whose claims can be effectually disposed of without any tedious enquiry. Chronology is fatal to two, impossible nomenclature to others, foreign origin to some, while the rest are devoid of proof.

The pedigree of one of our oldest—our very oldest—houses, that of Kingscote of Kingscote, has at its head "Ansgerus the Saxon, living 985." But even a glance at the pedigree as given in 'Burke's Landed Gentry' is enough to make evident its impossibility.

NIGELL FITZ ARTHUR, grandson of ANSGERUS the Saxon, living 985, m. Adeva, dau. of Robert Fitz Hardinge, grandson of Sueno, the 3rd King of Denmark, by Eva, niece of WILLIAM THE CONQUEROR. With this lady he received as dower the manor of Kingscote (called in Domesday Book Chingescote).

ADAM DE KINGSCOTE, of Kingscote, (son of Nigell Fitz-Arthur by Adeva his wife) had a confirmation of that manor 1188, from his uncle, lord Maurice Fitz-Hardinge.

of great dignity and worth; on whom Ranulph, the first earl of Chester, bestowed the bailywick of Wirral, and delivered to him a horn to be the token of his gift" etc. This quaint account in the 'Vale Royal' is somewhat inaccurate, but the forester's horn of office is said to have been preserved in the family.

The chronology of this pedigree is fatal. Nigel Fitz-Arthur is son-in-law of a man who died in 1171, and grandson of a man who was "living 985." The next two generations add to the wonder, for Nigel's younger son appears to have lived till 1241, and so did Nigel's grandson.<sup>1</sup> Thus the great grandson of a man "living 985" was himself living as late as 1241! Nigel Fitz-Arthur, I hasten to add, was a very real person, who begins to attest Berkeley Charters as early as the close of Stephen's reign. His father Arthur, therefore, must have lived under Henry I and Stephen. But who this Arthur was there seems to be nothing to show. His name is of the rarest in Domesday, and, of its two bearers in 1086, one is expressly termed a Frenchman (*quidam Francigena*).

If, as is possible, Nigel married a daughter of Robert Fitz-Harding—the form 'Adeva' is rather impossible, but is obviously meant for a 'Saxon' name,—it is at least certain that Robert Fitz Harding was not the grandson of the King of Denmark, a legend which the Berkeleys, his descendants, have long since dropped,<sup>2</sup> though they seem to have urged it even as late as the days of Charles II. At the Restoration Lord Berkeley, in his petition for a higher precedence, set forth his lineal descent from Robert Fitzhardinge, grandson to the King of Denmark; and the patent creating him an earl (1679) set forth his high descent "from the illustrious and very ancient family of the Barons of Berkeley, whose progenitor Maurice, son of Robert

<sup>1</sup> *Burke's History of the Commoners* I, 280.

<sup>2</sup> See Jeayes' *Berkeley Charters and Muniments* (1892), pp. i-ii.

Fitzhardinge, sprung from the Royal stock of the Danish kings, and a most distinguished champion in the Conquest of England," etc. etc.<sup>1</sup> This would make the family of Conquest, not of 'Saxon' stock, though one does not see how Robert Fitzhardinge, who lived under Stephen and Henry II., can have taken part in the Conquest. The Danish origin of the Berkeleys is not even to be found in the pages of 'Burke's Peerage.' This latter work, however, provides Robert with a wife, not in a niece of the Conqueror, but in "Eva, sister of Durand, and daughter of Sir Estmond and Godiva his wife"! One knows not which is the more ridiculous of these rival efforts of Burke brothers.

In its obituary notice of Sir Nigel Kingscote, the *Standard* of Sept. 23, 1908 stated that "The pedigree roll in the house at Kingscote traces this family back to the year 985. Sir Nigel was the 25th in descent from Robert Fitzharding, a grandson of the King of Denmark, and husband of Eva, niece of William the Conqueror." But the real distinction of the Kingscotes is expressed in the quaint words of Smyth of Nibley :—

It may be said of this family, as doubtless of no other in the county of Gloucester, nor I think, of many others in this kingdome, that the present Mr. Kingscote and his lineal ancestors have continued in this manor nowe about 500 years, never attained, nor dwelling out of it elsewhere, nor hath the tide of his estate higher or lower flowed or ebbd, in better or worse condition ; but like a fixed star in his firmament to have remained without any remarkable change.

<sup>1</sup> *Berkeley Case Minutes* (1829), p. 265.

Three hundred years have passed since then ; but Kingscote has still a Kingscote for its lord.

It is a singular fact, which may have escaped notice, that there seems, under Charles the First, to have been a distinct craze for 'Saxon' ancestry. The most striking case, perhaps, is that of Sir Edward Dering, to which we shall come below. But in 1638 was compiled the great genealogy of the Howards from "the raigne of King Edgar," and in 1632 Garter Segar had traced the Westons from an ancestor living "in the reign of Edward the Confessor." Eager, restless, credulous, and a bit of a romancer himself, the famous Sir Kenelm Digby resolved to be Saxon too. In 1634, "at the expence of twelve hundred pounds,"<sup>1</sup> he produced a great genealogy of his house tracing its descent, step by step, from Ælmar, "Anglus-Saxonicus qui tenuit terras in Tilton, com. Leicr."

The pedigree in *Burke's Peerage* now begins thus :—

In the Confessor's reign Aelmer held land at Tilton, co. Leicester. The family of Digby descending from him were sometimes styled Diggeby de Tilton and sometimes Tilton only.

The earliest Digby named, however, is a "Robert de Digby" in 1234. But the intervening steps can be supplied from other sources.<sup>2</sup> Although these differ in details, they agree in making Robert de

<sup>1</sup> Pennant's *Journey from Chester to London* (in 1780), p. 441 (Ed. 1811). His description of this "famous genealogy" shows that the volume was the work of Lilly, the herald who afterwards compiled the splendid Howard genealogy (p. 15 above). This would account for its great cost. Pennant had borrowed the volume from Watkin Williams.

<sup>2</sup> Burke's *Commoners*, IV, 460 ; Lipscombe's *Bucks*, I, 147.

Digby who lived in 1260 a great-grandson of Ælmar who lived under the Confessor, some two centuries earlier. As in the Kingscote case, chronology is fatal to the claim. Moreover, Tilton and his other lands were lost by Ælmar at the Conquest and bestowed on Robert Despensers, a great Norman baron. There is not the slightest reason to suppose that Ælmar was the ancestor of the Digbys.

The name, however, of the supposed ancestor was revived by the family, as in other cases, in the 19th century. In the great days of the Gothic revival, when George the Fourth was crowned with almost medieval splendour, with a real champion astride on a real circus horse, ancient pedigrees were furbished up and long forgotten names returned to life. Among them was that of the Digbys' patriarch in the queer form "Almarus."

But if the modern scientific genealogist must jettison this old pedigree, does he, in so doing, deny the antiquity of the Digbys? By no means. He seeks to reconstruct it on the sure ground of records. That the surname was originally derived from Digby in Lincolnshire is obvious. Now, in a return of the year 1235, we find Robert "de Diggeby" holding half a fee at Tilton<sup>1</sup> (between Leicester and Oakham) and Robert "de Tilton" holding half a fee in Digby<sup>2</sup> (north of Sleaford). We shall, probably, not be wrong in assuming that these were the same man. We then seek to identify in the great return of knights (1166) these two under-tenancies, and we duly recognise the former

<sup>1</sup> *Testa de Nevill*, p. 92.

<sup>2</sup> *Ibid.* 319.



in the half-fee held by Everard "de Tilinton" (or "Tilitone") of William de Beauchamp,<sup>1</sup> while the latter must be found in that knight's fee which was held jointly of Ralf Hanselin by Walter "de Diggeby" and William, two boys (*duo pueri*).<sup>2</sup> The inference I should draw from this evidence is that the two holdings were in the hands of different families in 1166 but had become united, through a marriage, before 1235. Tilton, however, became the seat of the family,<sup>3</sup> and it was there that the pedigree-maker sought to find their 'Saxon' ancestor. He selected for the purpose *Ælmar*, who occurs under Tilton as the former holder, *not* of Tilton only, but of two other manors as well,<sup>4</sup> and who is clearly identical with the *Æilmar* who had preceded Robert the Despenser at another Leicestershire manor and the *Ailmar* who had preceded him at two in Warwickshire.<sup>5</sup>

He had then to bridge the usual gap, and he bridged it in the usual way. He took, I think, Everard de Tilton (1166) turned him into "Sir Everard Digby of Tilton," threw him back into the days of Henry I and Stephen, and made him a son of 'Ælmar' (T. R. E.) Then he took William de Digby, threw him back likewise, as a brother of Everard, and provided him with a son in Walter de Digby. He could not, even so, reach to Robert de

<sup>1</sup> *Liber Rubens*, p. 299.

<sup>2</sup> *Ibid.* p. 340. This entry would seem to have been overlooked. As Digby itself was held in 1086 by Geoffrey 'Alselin,' it is clearly the knight's fee held in 1166.

<sup>3</sup> There is no mention of them under Digby in *Feudal Aids*, but as late as 1428 these record Edward "de Tylton" as holding half a fee there.

<sup>4</sup> The Domesday formula under Tilton was evidently misunderstood. "Has terras" refers, not to Tilton only, but to the manors immediately preceding it as well.

<sup>5</sup> All these names represent the A. S. *Æthelmær*.

Digby, but he adopted the usual device of bifurcating Robert, and with these two Roberts he bridged at last the gap, <sup>1</sup> *tant bien que mal*. <sup>2</sup>

Lord Redesdale's pedigree in 'Burke's Peerage' begins with a very definite statement, which we may amplify by reference to that of the Mitfords of Mitford Castle in 'Burke's Landed Gentry.'

#### PEERAGE

The ancestor of this house was in possession of Mitford Castle in the time of Edward the Confessor, and Sir John de Mitford held the barony of Mitford at the Conquest.

#### LANDED GENTRY

At the time of the Conquest the barony of Mitford was held by Sir John de Mitford, whose ancestor was in possession of Mitford Castle in the time of Edward the Confessor... Sir John's only daughter, Sibella, was given in marriage by the Conqueror to Sir Richard Bertram, a son of the Lord Dignam, in Normandy, and from this union sprang the old baronial House of Bertram of Mitford... Sir John de Mitford was succeeded by his brother Matthew de Mitford, from whom, etc.

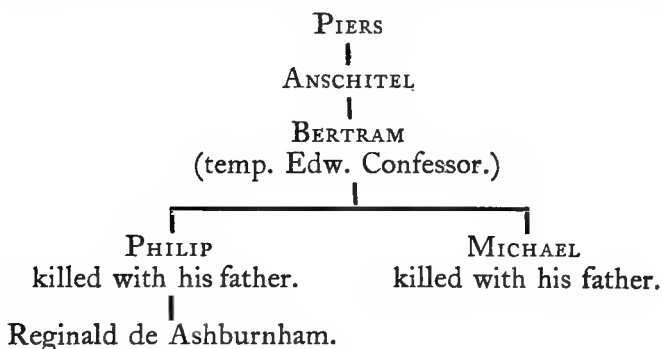
We may leave aside "The Lord Dignam," as merely one of those freakish beings whom one expects to meet with in the pages of 'Burke'; we are somewhat puzzled by that 'ancestor' of Sir John who held Mitford under the Confessor, for Sir John himself was holding it "at the Conquest," that is,

<sup>1</sup> Compare my demonstration of the similar treatment of Henry de Trafford to bridge the gap in the Trafford pedigree.

<sup>2</sup> I have followed the pedigree given in Burke's *Commoners*.

within twelve months of Edward the Confessor's death ; but what floors us is that the Bertrams were lords of Mitford and its castle (as they certainly were), and yet Sir John, we see " was succeeded by his brother Matthew." Was there a 'Saxon' deed of entail in favour of heirs male ? <sup>1</sup> Yet even if there were, how can the brother have succeeded, to the exclusion of his niece, when it was, admittedly, the niece herself who succeeded ? However we need not concern ourselves with such problems as these : the 'Saxons' did not bestow upon their children such names as John, Matthew, or Sibella. We may bow them out all three ; " they have their exits ". Let us call the next case.

The Ashburnhams, as shown in the paper entitled ' Tales of the Conquest,' were among Mr. Freeman's victims in the *Contemporary Review*. Here we may briefly dispose of their pre-Conquest ancestry by printing in small capitals the fictitious portion of their pedigree as set forth in Drummond's *History of Noble British Families* (1846), Playfair's *Baronetage* etc.



<sup>1</sup> The ' Landed Gentry' gravely cites a tale that " one of ye ancestors of Mitfords of Mitford, in ye time of K. Edwd. the Confessor, did assure his wife's joynture " by deed.

It is obvious that the names of Bertram, of his grandfather (Piers !) and of his sons are all alike impossible as those of ' Saxons. ' Moreover, the first known ancestor, Reginald, was in possession of Ashburnham in 1166,<sup>1</sup> and cannot therefore have been the son of a man killed a century earlier.

Foster's Peerage very properly began the pedigree with Reginald, but ' Burke, ' though now compelled to do the same, cites Nisbet to the effect that this "is one of the ancientest families in England, which can be instructed to have been of good account in England before the Conquest. " And even the rightful mention of Reginald as " the first member of the family of whom any absolutely authentic record exists " leads to an absurdity, for, having stated that he " gave to the church of St. Martin, of Battle, all the land which they had in Hou, " etc, ' Burke ' proceeds :—" The original grant is in the possession of the Earl of Ashburnham ; it gives to *Alred of St. Martin* <sup>2</sup> all the lands of Dudewell, " etc. etc. The writer of this seems to have supposed that the church of St. Martin, of Battle (i. e. Battle Abbey), was the same thing as " Alred of St. Martin, " a real man, who held, like Reginald, of the Count of Eu,<sup>3</sup> and who acted as sheriff for the Count within his Rape of Hastings.<sup>4</sup> The importance of the Ashburnham case lies in the further illustration it affords of the fact that even a

<sup>1</sup> *Red Book of the Exchequer*, p. 203. He there appears as of " Oseburnham " or " Osseburnham, " and, as there is no cross-reference in the Index, he might well be overlooked.

<sup>2</sup> The italics are mine.

<sup>3</sup> *Red Book of the Exchequer*, p. 203.

<sup>4</sup> *Chronicon de Bello*, p. 166. For the sheriffs of the Sussex rapes see my *Calendar of Documents : France*, p. li.

house of "stupendous antiquity", as was Ashburnham of Ashburnham, has to begin its pedigree, not before, or even at, the Conquest, but a whole century after that event. Again we see that our oldest families can rarely get beyond the returns of 1166.<sup>1</sup>

The houses of FitzGerald (Duke of Leinster) and Carew can claim the proud distinction of a clear descent in the male line, not only from an ancestor whose name is mentioned in the Domesday survey, but from one who was then a 'baron' or tenant-in-chief and whose father's name is recorded. As, here at least, we are dealing with no imaginary "patriarch," but with a real follower of the Conqueror, ancestor of both those houses, 'Burke,' of course, converts him into an "English baron," and thus contrives to make grotesque an almost unique distinction. Here is what the 'Peerage' states as to the Carews' origin.

The Carews are one of the few families remaining which can trace their descent, without interruption, from the Anglo-Saxon period of English history.

Otho, a powerful English baron in the time of Edward the Confessor, etc.

Under Leinster we meet again with the common ancestor, "Otho," in a passage which, with my comments thereon, I venture to quote from my former work *in extenso*.

<sup>1</sup> Mr M. A. Lower dealt with the Ashburnhams in *Sussex Arch. Coll.* vol. XXIV, but he was a somewhat uncritical and frivolous genealogist, and his remarks are chiefly noteworthy as a warning against that respect for 'tradition' from which he could not free himself. He knew that Domesday shows us Ashburnham as held by "Robert de Cruel" (which he wrongly supposed to be Creully) but he weakly endeavoured to uphold tradition by suggesting that Robert might have been an interloper, after whom the 'Saxon' possessors were restored. What has to be grasped is that the Pre-Conquest Ashburnhams are demonstrably fictitious persons.

The pedigree of FitzGerald still begins with a story which is not only absolutely, but also demonstrably false :

"The FitzGerald's are descended from 'Dóminus OTHO', who is supposed to have been of the family of the Ghetardini of Florence... This noble passed over into Normandy, and thence, in 1057, into England, where he became so great a favourite with Edward the Confessor that he excited the jealousy of the Saxon thanes. However derived, his English possessions were enormous, which at his death devolved on his son WALTER FITZ OTHO, who, it is somewhat remarkable, was treated after the Conquest as a fellow-countryman of the Normans. In 1078 (*sic*) he is mentioned in Domesday Book as being in possession of his father's estates."

Such circumstances are certainly "somewhat remarkable," their explanation being that they are at complete variance with the facts. "Walterius filius Otheri" (*sic*), the undoubted founder of the house, first occurs in Domesday Book (not 1078, but 1086), where he is found in several counties as a tenant in chief. It nowhere styles him a son of Otho, of which 'Otto' was the Domesday form, and it does not state that his possessions had belonged to his father, but, on the contrary, proves them to have belonged to forfeited Englishmen. Thus the 'Otho' story is shown to be absolute fiction. Will Sir Bernard, I asked in my review of the 1892 edition of the *Peerage* (*Quarterly Review*) continue to repeat it, while assuring the public that he has "endeavoured to render minutely correct the ancestral details of the lineages" ? We turn to the edition for 1900, subjected, as we are informed, to a "more thorough revision than usual," and we read with awe of "the laborious researches" by which Somerset Herald has so greatly increased "the genealogical value of the work." And then we find the whole fiction repeated word for word, including the gross blunder on the date of Domesday Book.<sup>1</sup>

<sup>1</sup> *Studies in Peerage and Family History*. pp. 69-70. I have subsequently dealt in detail with "the origin of the FitzGerald's" in *The Ancestor* Nos. I. and II. (1902) and with "The origin of the Carews" (*Ib.* No. V, 1903).

I am now, in 1909, correcting this fiction for the fourth time, the editor of 'Burke's Peerage' having steadily continued to repeat it, while assuring the public year after year that the work has been subjected to searching revision and embodies the results of constant research.

Thirty two years ago Mr. Freeman had to complain that Sir Bernard Burke persisted in publishing "monstrous fictions," while assuring his readers that he had "subjected its pages to searching revision and extensive amendment."<sup>1</sup> The same assurances are still given: we read in 1900 of "a more thorough revision than usual" and of "laborious researches," while in 1901 the public was assured that :—

"Most laborious pains have been taken in this edition of 'The Peerage and Baronetage' to ensure the accuracy of every statement..... To the historical student such a work is indispensable...

I have devoted especial care and attention to the revision of the pedigrees..... correcting former errors in the light of fuller information and original research."

Next year we were boldly informed that:—

It is gratifying to the Editor to know.... that *Burke's Peerage*.... is considered authoritative on the subjects with which it deals....

To keep this huge mass of information abreast of the times and to make it complete and accurate in every particular has been my endeavour, and no trouble or labour has been spared to accomplish this aim....

My especial care has been to achieve accuracy and completeness, and the testing of all facts by research and

<sup>1</sup> *Cont. Rev.* XXX, 12-13.

investigation has been an undertaking of much labour difficult to realise.

These professions I dealt with in my article, "An authoritative ancestor,"<sup>1</sup> in which I demolished the ludicrous statements at the head of Sir Thomas Esmonde's pedigree, which had actually been amplified since I had criticised them.<sup>2</sup> This has at last enforced their withdrawal.

But the same claims continued to be made : the book proclaimed itself in 1904—

a work of real historic interest and value.

The narrative pedigrees in 'Burke's Peerage' are subjected annually to searching revision, and... the chronicles are made to keep pace with... the latest results of genealogical research and discovery.

The next year (1905) one again read of "constant genealogical research and close revision of every pedigree in the work." But need one quote further these *crambe repetita*? There is no need for "laborious researches" : what is needed is the frank acceptance of the published results attained by the laborious researches of others and the withdrawal of known fictions, or, in default thereof, the cessation of assurances to the public that such fictions represent "the latest results of genealogical research and discovery."

Like FitzGerald and Carew, Shirley (earls Ferrers) has a splendid pedigree : in Domesday book the Shirleys' ancestor is only, indeed, an under-tenant ; but the manors he held in that capacity

<sup>1</sup> *The Ancestor*, No. I, pp. 189 *et seq.*

<sup>2</sup> *Studies in Peerage and Family History*, p. 63.



would have formed a decent 'barony,' and of these, Nether Easington has remained in the hands of his male descendants ever since. But when we have fully recognised that such tenure is all but unique, we must still deny that the family can trace it beyond the Conquest or indeed that they themselves are of 'Saxon' descent. In 'Burke's Peerage' we read of

SASUALLO or SEWALUS DE ETINGDON, whose name (says Dugdale in his *Antiquities of Warwickshire*) argues him to be of the Old English stock. He resided at Nether Etingdon in the County of Warwick about the reign of King Edward the Confessor, which place had been the seat of his ancestors, as there is reason to believe, for many generations before that period.

There is, on the contrary, nothing to show that 'Saswalo' as Domesday styles him, resided there before the Conquest or to suggest that the place had ever been owned by his ancestors. It is no discredit to a worthy, but old-time antiquary that Dugdale imagined him from his name to be of Old English stock. Domesday, however, shows us the name occurring in seven counties under William the Conqueror, and not a single occurrence of it under Edward the Confessor.<sup>1</sup> Moreover our 'Saswalo' held, under Henry de Ferrers, not only Nether Easington, but manors in Derbyshire, Lincolnshire, and Northants, which we know had not been his before the Conquest. He was, therefore, no mere English thegn, suffered to remain on his paternal acres, but one of those who, under Norman lords, shared in the spoils of England.

<sup>1</sup> Besides the Shirleys' ancestor, there was a 'Saswalo' (de Oseville) who held under Geoffrey de Mandeville. Mr W. H. Stevenson kindly informs me that "It is above all *not* an Anglo-Saxon name. It is a Frankish name."

There is one family whose English pedigree one cannot confidently reject. According to the *Landed Gentry*, Thursby (formerly) of Abington "claims to be of Saxon descent." This extremely vague claim is slightly amplified in the *History of the Commoners*, where "Gospatrick lord of Thoresby, living in the time of the Conquest" is named as the patriarch of the house. Gospatrick was far more than mere 'lord of Thoresby.' A great native thegn of the north, he held in Yorkshire a vast estate, and is deemed to have been the son of that Archil who made terms with the Conqueror, as a Northumbrian noble. It is alleged that, of Gospatrick's sons, Dolfin succeeded to his Thoresby estate and became ancestor of the Thoresbys.<sup>1</sup> One rather wishes that they had not included in Ralph Thoresby, a famous antiquary; for some of these family antiquaries have much to answer for. Nevertheless it is precisely among descendants of Yorkshire thegns that one would be most likely to find real 'Saxon' families in later times.

It is to be observed, however, that the Northamptonshire house claims descent through a John Thoresby, Mayor of Lynn Regis in 1425, who is alleged to have been the younger son of a Cumberland squire.<sup>2</sup> Unless there is evidence to prove this, one of the two Lincolnshire Thoresbys would seem more probable as the place of his origin.<sup>3</sup>

<sup>1</sup> The only authority for this seems to be a roll of the time of Henry VI, printed in Gale's *Registrum Honoris de Richmond*.

<sup>2</sup> Compare, p. 25, note 2 above, for such allegations.

<sup>3</sup> Mr A. S. Ellis, in his "Notes on Ralph Thoresby's pedigree" (which he proves to be untrustworthy), points out that Blomefield, the historian of Norfolk, considered the family to be probably descended from the Thoresbys of Steynton-in-the-hole, Lincs. John's name is not found on the old pedigree roll.

And in any case the Thursbys of Abington cannot be included here, for their male line came to an end in 1736.

The claims of three Cornish houses—ancient though they be—to begin their pedigrees before the Conquest fall to the ground at once for lack of proof. In 'Burke's Commoners' we have this exordium to Polwhele of Polwhele :—

This family claims Saxon origin and takes its name from the manor of Polwhele (in Domesday 'Polhel') in the county of Cornwall, a manor occupied under Edward the Confessor by WINUS DE POLHAL (Polwel or Polwyl), and then by Ulfius, a villain of the Earl of Moreton; but that was a temporary possession... In the year 1140 the Empress conferred (by a deed which begins thus 'Drogoni de Polwheile Camerario meo') lands in Cornwall upon her chamberlain, DROGO DE POLWHELE, with whom the pedigree of the family commences.

It is now, in the *Landed Gentry*, more definitely asserted that "This family is (*sic*) of Saxon origin," though the grant by the Empress, *per contra*, is merely said to be "stated."

Now, apart from the fact that a grant from the Empress cannot have had the abrupt beginning "Drogoni" etc., we find at once, on turning to Domesday, that the holder of "Polhal" under Edward was neither 'Winus' nor 'de Polhal,' but 'Ulwinus' (i. e. Wulfwine) simply. And there is absolutely nothing to connect him with that 'Drogo de Polwhele' with whom the family pedigree is alleged to begin.

With the case of Trelawny I have dealt before,<sup>1</sup> but 'Burke' still fatuously states that Trelawny:—

<sup>1</sup> *Studies in Peerage and Family History*, (1901), p. 65.

in the time of King Edward the Confessor, was the property of its earliest known ancestor, Eduni (*sic*), whose son, Hamelin, was likewise the owner of 'Treloen,' after the Norman invasion, by a tenure from the Earl of Mortain, as found at the general survey.

We find, on the contrary, from the general survey, that the name of the English holder was 'Edwi' (i. e. Eadwig) and that Hamelin, who is coolly annexed as his son and as the Trelawnys' ancestor, was that great foreign tenant of Count Robert of Mortain who held of him over twenty manors and styled himself 'Hamelin of Cornwall' (*Hamelinus de Cornubia*). I am not sure if the family of Trevelyan ought to be dealt with in this section, in spite of the very definite assertion that "it was possessed antecedent to the Conquest" of Trevelyan, for no attempt is made to carry the pedigree back further than the days of James I.<sup>1</sup>

There was a time when one would have had to class among families with a definite pedigree extending beyond the Conquest the Kentish house of Dering. In the great *Baronetage* of Playfair that pedigree may still be read, and it has never been definitely abandoned even by 'Burke.' I here give the former and the present versions adopted by the latter :—

'Burke' (I).

This is one of those few ancient families, still existing in England that are of undoubted Saxon origin; an origin confirmed not

'Burke' (II).

(As opposite).

.....

<sup>1</sup> The family, of course, is far older than this.

only by tradition, but by documents. Wotton in his authentic family documents; *Baronetage* A.D. 1741 nar-  
one of its remote ancestors rates that

DIERING MILES

DIERING MILES

..... in 880..... To etc. (as opposite).  
pass, however, to more  
recent progenitors, etc.

The intervening links are roughly supplied by Playfair, who records the pedigree thus :—

From this Diering Miles to the Norman invasion are reckoned seven generations, the last of which was called Dering filius Syredi, who was slain with King Harold at Battle in Sussex. He was father of Syred de Ferningham, who was the father of Leofget, who, upon the death of William, took up arms, with Odo bishop of Bayeux, in behalf of Duke Robert; but being overpowered, he retired with his family into Normandy; where he had two sons, viz; Normanus Dering, so called from the place (of) his birth (!) ..... At the battle of Lincoln, where King Stephen was taken prisoner, this gentleman was slain near the King's person, in endeavouring to rescue his monarch; and in consequence of his being found after the battle with his shield covered with blood, his posterity were allowed to add to their paternal arms three torteauxes in chief, in memory of his loyalty and bravery.

At this point one gasps. The history is all so correct; the details of the Derings' deeds so exact. Even Playfair, however, here breaks off and observes that

Hasted, in his History of Kent, says, 'What authorities the family may have for many of the above circumstances I cannot learn; the only account I have been able to gather from the family papers and manuscripts in the Dering Library, and from other evidences, is etc.,

The only 'authorities,' in short, for this family history, are what 'Burke' ingenuously describes as "authentic family documents."

What we are really dealing with is a kind of historical novel, such as from the pen of Sir Walter Scott or of Sir Conan Doyle we should accept as avowed fiction, in which the events of English history are made a background for the doings of a race of warrior heroes.

The thing is done cleverly enough ; there is nothing, as Mr Freeman would have said, "impossible," either in the heroes' names or in the events recorded, save that an honourable augmentation to the Dering arms for valour at the Battle of Lincoln (1141) is, of course, a wild anachronism, and that men who bore the name of Norman were not so christened because they were born in Normandy. But the strange thing is that the man who concocted the story was not content with a 'Saxon' pedigree beginning in the 9th century, but wanted to make the family Norman too !<sup>1</sup> So he married the heiress of the 'Saxon' house, *temp.* Henry II, to a certain "Vitalis Fitz Osbert," a real man who really lived, in that reign, in Kent. Therefore, if the "family documents" really were "authentic," they would definitely prove that the family were of Norman, and *not* "of Saxon origin" !<sup>2</sup>

The early pedigree, however, though not definitely rejected, is discreetly shirked, nowadays, by 'Burke,' who begins the actual descent only with John Dering, who married the heiress of

<sup>1</sup> The case of the Wakes is somewhat similar.

<sup>2</sup> The whole concoction is dealt with further below and its probable author identified.

Surrenden (now Surrenden Dering) and died in 1425. I shall therefore deal with the Derings below in another class, in case one should not be thought justified in treating the pedigree from 'Saxon' times as still definitely upheld. But that it is still widely credited is evident from certain facts. For instance, when I was once explaining to a very high heraldic official how untrustworthy were most pedigrees that extended back to the eleventh century, he fell back on that of Dering: "Dering, at any rate, is all right?" And the paragraph which follows is taken from a serious and literary paper:—

Sir Henry Dering..... is the head of one of the half-dozen families who can base their claim to Saxon descent on indisputable historic documents. In his case one of these treasured records is 1024 years old.<sup>1</sup>

Obviously this treasured record is that which 'Burke' now says that Wootton says, mentions a 'Diering miles' in 880. But where it is "treasured" we are not told. The point I here wish to make is that for a deed of 880 'Burke' now vouches as authority a *Baronetage* published in 1741. One does not see why its editor need have gone back so far; 'Burke's Peerage and Baronetage' for 1829 would have been equally valid as authority to vouch for the fact.

Awkward as it is to break the story of the Dering myth, I shall take it up again below on the ground that it really originated in that confusion of a surname with a Christian name which is so fertile a source of delusion and belongs therefore to the

<sup>1</sup> *Standard*, 16 Jan. 1906.

group of families imbued with that common delusion.

We have still to deal with one family propounding a definite pedigree which extends for some distance beyond the Conquest. This is the Lancashire house of Trafford, which, in early Victorian days, when such things were the fashion, and when 'modern Gothic' was the rage, was authorised to alter what 'Burke' imagines to be "the orthography" of its name by placing a 'De' before it. Now as then<sup>1</sup> its pedigree begins in this astounding fashion :—

The old and knightly family of Trafford, seated at Trafford, in the county palatine of Lancaster, from a period antecedent to the Norman Conquest, has preserved, from time immemorial, an unbroken male descent.

RANDOLPHUS DE TRAFFORD, who flourished 'ante Conquestum', as the family pedigree sets forth, was father of

RANDOLPHUS, of whom mention is made in two deeds to "Radulphus (*sic*) filius Radulphi" (*sic*), by which it appears that Radulphus (*sic*), the father, "was then dead, and had flourished in King CANUTE the Dane his time, about the year 1030, and perhaps died after, in St. Edward the Confessor his time, about the year 1050; hee had noe surname, as then few of our Saxon nobilitie or gentry had." From this Radulfus (*sic*) sprang the great house of TRAFFORD, which has since uninterruptedly held a most distinguished place amongst the first families of Lancashire. His son

ROBERT FILIUS RADULPHI was of full age at the time of the Conquest, and about A.D. 1080 he, with his father, received the King's peace and protection from Hugh<sup>2</sup> (*sic*)

<sup>1</sup> E.g. in *Burke's History of the Commoners* IV, 247.

<sup>2</sup> This is an instance of genealogical development in the 'Peerage'. For the Baron's real name was Hamon, as rightly given in the 'History of the Commoners'.



de Massy, Baron of Dunham Massy ; his son,

HENRICUS FILIUS ROBERTI, temp Henry I, d. about 1130, leaving a son,

HENRY DE TRAFFORD, of Trafford, co. Lancaster, whose name appears in several deeds during the reigns of Henry II and Richard I ; he d. after the year 1200, etc., etc.,

Before we criticise the pedigree here given let us grasp the fact that, for its earliest generations, its dates are absolutely consistent. If " Robert filius Radulfi " was of " full age at the time of the Conquest," he must have been born not later than 1045. His grandfather, therefore, allowing twenty-five years for a generation, would be born not later than 995, and would flourish, exactly as stated, " in King Canute his time." Let us further observe that the compiler must have been blissfully ignorant that " Randolphus " and " Radulfus " are not the same, but are the Latin forms of names so essentially distinct that they are now respectively represented by ' Randall ' and by ' Ralph.'

Glancing at those families which claimed pre-conquest ancestors, I observed in my *Quarterly Review* article, and afterwards in my *Studies in Peerage and Family History* (p. 65), that

As for " Randolphus de Trafford," who lived *ante conquestum*, as the family pedigree sets forth, we may leave him to the company of an impossible ' Eduni',<sup>1</sup> " the earliest known ancestor " of the Trelawnys etc. etc.

It was needless to investigate the Trafford pedigree, for it was obvious that three Traffords in succession, all alleged to be English thegns and

<sup>1</sup> Impossible, because there was no such name. ' Edwi ' seems to be meant. Cf. p. 52 above.

all receiving foreign names, must be an absurd anachronism.

After my book was in type an article appeared which led me to add to the preface this footnote.

Even as this preface goes to press the *World* (17 Oct. 1900), in an article on " Sir Humphrey de Trafford at Home," asserts that " Randolph, Lord of Trafford, was the patriarch of the family, which for nearly nine centuries after him has produced an uninterrupted line of heirs male. The first recorded Trafford lived in the reigns of King Canute and Edward the Confessor, being succeeded by his son Ralph," etc. This grotesquely impossible tale is duly found in *Burke's Peerage*, although it is shattered by Domesday Book.

A glance, indeed, at Domesday Book is enough to show that Randolph was not a native name, and that the names assigned to the three alleged thègns are " grotesquely impossible " in days before the Conquest.

I have been reluctantly compelled to repeat myself to this extent, because in 1904 Mr W.H.B. Bird came forward with an article in *The Ancestor* to reinstate the pedigree. After citing from Harl. MS. 2077 the pedigree from " King Kanutus his time," which is in effect reproduced in ' Burke's Peerage,' he proceeded thus :—

Needless to say, in an age of criticism, a pedigree like this has not gone unchallenged. Mr. Shirley shook his head over what he found in Baines and assumed that the antiquity of the family was exaggerated.....

It is a more serious matter when Mr. Round comes forward to denounce our pedigree as ' a grotesquely impossible tale,' etc. etc.<sup>1</sup>

<sup>1</sup> *Ancestor*, No. 9., p. 68.

And, eventually, after reciting the substance of seven charters, he summed up confidently as follows :—

In the light of this evidence I do not think the most impatient critic will any longer deny the existence of the impossible Randolph, or refuse assent to the following pedigree, with which, be it observed, Randle Holme,<sup>1</sup> when stripped of his exuberances, will be found to agree.<sup>2</sup>

In Mr. Bird's subsequent paper (*Ancestor*, No. 12, p. 42) he scoffed at the "amazement of Mr. Round upon finding that a pedigree, which he had denounced at sight in no measured terms, could after all be proved step by step, with one doubtful exception." It has been shown above that what I denounced was the pedigree from "King Canute his time" with its 'grotesquely impossible tale' of three pre-Conquest Traffords with foreign names.

Before we proceed further, I desire to ask the reader what he imagines, from this, Mr. Bird has claimed to prove. Surely it can only be that Mr. Shirley's doubts were groundless; that the antiquity of the family is not exaggerated; and that the "impatient critic" by whom these lines are written was wrong in rejecting as impossible, without further investigation, three generations of English thegns, all of them bearing foreign names, before the Norman Conquest. He must mean that, or he means nothing.

What then was my surprise, indeed my "blank amazement," to discover that, in spite of his

<sup>1</sup> To whom Mr. Bird assigns Harl. MS. 2077, on which the pedigree 'in Burke' is based.

<sup>2</sup> *Ibid.* p. 71.

annoyance at my " impatient " criticism, Mr. Bird did not venture to meet it, but abandoned altogether that pre-Conquest pedigree which Randle Holme set forth ! It is not, observe, a question of " exuberances. " There is nothing exuberant in Randle's statements ; carefully and quite consistently,<sup>1</sup> he builds up, step by step, a pedigree tracing back the Traffords to " King Canute his time. " <sup>2</sup> Mr. Bird, so far as it is possible to follow the working of his mind, appears to consider that all he has to do is to prove the " existence " of Randolph, the " patriarch " <sup>3</sup> of the house. Whether he existed under King Canute or flourished in the days of King Stephen he seems to consider a mere detail of relatively small consequence. To the ordinary mind it would seem, surely, to be precisely the question at issue.

It was the special wonder, the unique glory of the pedigree that it extended back, in the male line, to the days of King Canute. Mr. Bird, we shall find, admits, of Randle's basic document, that he placed it very nearly a century too early. That is all. And with that admission there departs the whole wonder of the pedigree. Consequently, Humpty Dumpty lies prone upon the ground : Mr. Bird has not succeeded in setting him back upon the wall.

Let me prove my statement. The genesis of the Trafford pedigree is quite simple to explain. We start with a descent in the male line proved,

<sup>1</sup> See p. 57 above.

<sup>2</sup> We have to thank Mr. Croston for printing it in his *History of Stretford Chapel* (Chetham Society) III, 101-103. I have only recently seen this book and learnt from it that Mr. Bird had worked specially on the pedigree.

<sup>3</sup> See p. 58 above.

it is claimed, by record evidence up to Henry de Trafford who succeeded in 1205. Whom he succeeded we are not told ; but a striking *catena* of charters shows us a Henry son of Robert son of Ralph de Trafford, which last Ralph, in a single charter, appears as the son of Randolph. This single charter, which I termed above " Randle's basic document," formed the starting-point of his pedigree. Of this charter Mr. Bird writes :—

For No. 1. as he (Randle) understood it, the conquest seemed an appropriate epoch: date of the Conquest, of course, 1066.<sup>1</sup>

In his own opinion, however,

we shall not be far wrong if we set down... the date of the first charter we have as certainly later than 1130, and most probably belonging to the third quarter of that century<sup>2</sup> [1150-1175].

That is to say that Randle's pedigree, which is virtually repeated in ' Burke,' begins just about a century too soon. It is out of Mr. Bird's own mouth that my case is proved.

The Trafford pedigree, it will thus be observed, is precisely similar in its genesis to that of Stanley. In both cases it is based on a quite genuine charter ; but in both the pedigree-maker, to exalt the antiquity of the family, has assigned to the document a far too early date. The result has been in both cases to place in the days of the Norman Conquest an ancestor who lived in the second half of the 12th century (*i.e.* Robert and Liulf.) In neither case is there any need to call his existence in

<sup>1</sup> *Ancestor* No. 9, p. 72.

<sup>2</sup> *Ibid.* p. 74.

question : we merely charge the pedigree-maker, in the 17th century, with making him live absurdly early in order to extend the antiquity of the line.

The result, however, in the Trafford case was, apart from absurd anachronisms, to leave a ghastly hiatus between the Robert who had reached "man's estate" at the Conquest (1066) and his son Henry who first appears in 1205 ! The compiler might stretch and struggle ; but he could not make his ends meet. And the fearful grief to which he came needs no demonstration from me. For Mr. Bird himself has assigned to the outside limits " 1180 and 1220 ; " <sup>1</sup> four charters granted to " Henry son of Robert son of Ralph de Trafford, " whom the compiler shows us as :—

" Henry sonne of Robert sonne of Rafe de Trafford soe stiled in all deeds ; he lived in K[ing] H[enry] I tyme about 1130 and died perhaps not before K. Stephen's tyme a° 1150. " <sup>2</sup>

As the only Henry known to records did not even *succeed* till 1205, the compiler's plight was hopeless. Mr. Bird, indeed, does his best for him, pleading that—

Subsequent generations, no doubt, had to be spread out rather in order to make all shipshape ; but no matter. It was a good way on to the point where his materials permitted or required exact chronology. These Traffords were stout, long lived men, no doubt ; they could afford to pick and choose, and were in no hurry to sow their wild oats and marry. With Henry, whose death it places in 1200, the pedigree is only twenty years out. <sup>3</sup>

<sup>1</sup> *Ancestor*, No. 9. p. 74.

<sup>2</sup> *History of Stretford Chapel* (Chetham Society) III, 102.

<sup>3</sup> *Ancestor* IX, 72. I am obliged to quote the passage in full that I may not be charged with misrepresentation.

This, we have seen, gives but a very imperfect idea of how far the pedigree is "out." To such straits was its compiler driven that, in order to bridge the gap, *he had to interpolate a second Henry*, though there is not a scrap of evidence to suggest that there were more than one.<sup>1</sup> Yet, although for this *second Henry* he allowed some half century of possession, he could not reach, even so, the point at which the real Henry even *began* his possession ! He could not bridge so vast a gap.

One is reminded of the process by which was evolved that pedigree of Lord Fitzwilliam which still obstinately figures in 'Burke's Peerage.' A sealed deed is there similarly dated a century too early—1117 instead of 1217, and the true ancestor, who lived in the days of Henry II, is made into a Norman of the Conquest by changing his name to William Fitz-William and then "providing him with a father, a grandfather, and a great-grandfather, each of them named Sir William Fitz-William, and all of them alike fictitious."<sup>2</sup>

Let us take yet another instance. Lord Ancaster, of course, in the male line belongs only to the modern and citizen house of Heathcote, but the opening portion of his pedigree in 'Burke' may be cited here as an excellent illustration of that reckless chronology to which are due genealogical absurdities.

The lordship of Eresby was settled by William the Conqueror, with other manors, upon Walter de Bec, one of his companions in arms, who *m.* Agnes dau. and

<sup>1</sup> See his pedigree in *History of Stretford Chapel* III, 103, and compare the 'Burke' pedigree which I gave at the outset.

<sup>2</sup> See my *Studies in Peerage and Family History*, pp. 48-9.

heiress of Hugh son of Pinco, Lord of Tatteshall in the co. of Lincoln.

Here is a companion of the Conqueror marrying the daughter of a man whose name (as well as that of his father) proves that he cannot have been pre-Conquest lord of Tattershall. Moreover, the grandson of this marriage—

Walter Beke *m.* Eva, niece and heiress of Walter de Grey, archbishop of York [1216-1255].

The incoherence of such genealogy is manifest. Tattershall, as a matter of fact, was held, under the Conqueror, neither by Walter nor by Hugh, and it is easy to discover Hugh "*filius Pinconis*" living, not at or before the period of the Norman Conquest, but a whole century later, as a knightly tenant of the bishop of Durham.<sup>1</sup>

Here then we have, as in the case of Stanley, and even more in the case of Trafford, a man living under Henry II, thrown back to an early date to the utter confusion of the pedigree.

The really strange thing is that Mr. Bird, who was so indignant at my rejecting the accepted Trafford pedigree, had himself assailed, in the same publication, under the heading 'The Grosvenor myth,' the old pedigree of the Grosvenors;<sup>2</sup> for the Trafford case is the worst of the two.

The Grosvenors claim, as is well known, descent from a Gilbert le Grosvenor, nephew of Hugh 'Lupus,' earl of Chester, who came over with the Conqueror : but the Traffords, as we have seen,

<sup>1</sup> *Red Book of the Exchequer*, pp. 416, 417.

<sup>2</sup> *Ancestor*, No. I, pp. 166-188.



advance a bolder claim and place their "patriarch" in the distant days of Canute. Yet in both cases, according to Mr. Bird, the earliest document relating to the family is of the third quarter of the twelfth century.<sup>1</sup> And he ingeniously suggested that from this charter, a grant from an earl of Chester to a Grosvenor, there might have originated the story of a connexion, a century earlier, between the earl of Chester and a Grosvenor. But there was more than a story : a detailed pedigree from the Conquest ' Gilbert ' was put forward in 1385-1390, and, as Mr. Bird justly observes, "when it comes to a detailed pedigree, the difference of a century or so should involve chronological difficulties."<sup>2</sup> That is precisely what it did in the Trafford case, and the two Henrys represent the compiler's clumsy attempt to overcome it.

The question whether there were two Henrys (de Trafford) or only one was left by Mr. Bird, in his first article, perfectly open ; he preferred "to offer no opinion."<sup>3</sup> In his second he still declined to commit himself to the existence of a second Henry, though guarding himself by styling it "doubtful" whether he did not exist,<sup>4</sup> but he rebuked me at great length for "casting an imputation upon the maker of our pedigree."<sup>5</sup> His elaborate indignation is beside the mark. Accord-

<sup>1</sup> To be quite exact, Mr. Bird dates the Grosvenor charter 1153-1181, and observes, accordingly, that "the earliest Grosvenor in history lived about a century later than the Conquest" (*Ibid.*, p. 178). This, as I have said, is the period from which so many of our oldest houses must begin their pedigrees.

<sup>2</sup> *Ibid.*, p. 185.

<sup>3</sup> *Ancestor*, No. 9, p. 74.

<sup>4</sup> *Ancestor*, No. 12, p. 42 where he claims that there is only "one doubtful exception" to the old pedigree's accuracy (see p. 59 above).

<sup>5</sup> *Ancestor*, No. 12, p. 75.

ding to himself the known Henry was in possession of Old Trafford from 1205 to 1221 ; the compiler gives us in his place two Henrys, of whom the first died not later than 1150, and the second not later than 1200. Is it not proved, on Mr. Bird's showing, that the compiler was indulging in mere guesswork ? And yet this reckless guesswork is absolutely the sole foundation for the existence of a second Henry ! For us there is no gap to fill, and no need, therefore, for a second Henry : for the compiler of the pedigree it was a sheer necessity to hurl that Henry, like Quintus Curtius, into that fatal gap which was of his own making. Mr. Bird may affect indignation at my view, but the facts speak for themselves.

The only excuse the compiler could offer for thus dimidiating Henry was that he is sometimes styled Henry son of Robert son of Ralf de Trafford, and sometimes Henry de Trafford. So he made the latter his second Henry.<sup>1</sup> But we are coming to two parallel lists, on the Pipe Rolls of 1202 and 1204, in which the tenant in thanage of Pendlebury (who granted a charter to Henry) is entered. In the first he appears as " Elya de Pinnelberia,"<sup>2</sup> and in the second as " Elya filio Roberti ;"<sup>3</sup> yet no one dreams of suggesting that the two men were different.

But can we go further still and find actual mention of Robert son of Ralf immediately before Henry de Trafford succeeds in 1205 ? If so, there is an end of the question ; it can no longer be

<sup>1</sup> *History of Stretford Chapel* III, 102-4.

<sup>2</sup> Farrer, *Lancashire Pipe Rolls*, p. 153.

<sup>3</sup> *Ibid*, p. 179.

disputed that " Henry de Trafford " is identical with " Henry son of Robert son of Ralf de Trafford." There is such mention on the Pipe Roll of 1204, as there also is on that of 1202 ; but Mr. Bird thus dismisses it in a footnote :—

In 4 and 6 John a Robert son of Ralph owed arrears of scutage (Farrer, *Lanc. Pipe Rolls* 153, 159, 179.) No surname or locality is attached to him, and Mr. Farrer has not attempted to identify him with Trafford or any other family. So far as we know the Traffords held nothing at this time by knight service ; and *one would not expect to find a tenant in thanage under the heading 'de finibus militum.'*<sup>1</sup>

Now on turning to the first reference given, p. 153 of Mr. Farrer's book, we find a long list of names (pp. 152-153) of which the three first—and they alone—are entered as tenants by knight-service. Next come—" Et de ij m. de Henrico de Rademan *pro theinagio*. Et de ij m. de Adam decano *pro eodem*.... Et de ij m. de Gileberto de Croft *pro theinagio*." And lower down comes the entry " Et de ij m. de Robert filio Radulfi " (which are *not* entered as " arrears of scutage").

We see then that whatever Mr. Bird might " expect to find " in the record, we *do* find in it tenants in thanage (to say nothing of tenants by serjeanty) ; in other words (to quote a phrase of Mr. Freeman's) Mr. Bird in assuming that these records are concerned only with " knight service," cannot have read them "with common care." His blunder is the more inexplicable because, on turning to the next reference he gives (p. 159), we find

<sup>1</sup> *Ancestor*, No. 9, p. 74. The Italics are mine.

Mr. Farrer, on that page, identifying no fewer than eleven names on the list as those of tenants "in thanage"! In the list on p. 179 (the next reference) one would have imagined that Mr. Bird could have recognised, without assistance, the two names which immediately precede that of Robert son of Ralf as those of tenants in thanage, namely Gilbert de Norton and Elyas son of Robert (of Pendlebury), who actually granted a charter to "Henry son of Robert son of Ralf de Trafford."<sup>1</sup> In the list on pp. 152-3, the name of Robert son of Ralf is, we have seen, preceded by those of tenants in thanage who are so entered, as well (we find) as by others who were not, such as Roger de Middleton, who is entered immediately before him. It is also immediately followed by those of three tenants in thanage, Richard son of Robert,<sup>2</sup> the lord of Lathom, Henry de Melling and Adam de Garston, who were all similarly tenants in thanage, though not so entered.

In short, Robert son of Ralf occurs in both these lists in common with a number of tenants in thanage, and the objection raised by Mr. Bird collapses. We find the father of Henry de Trafford precisely where we should expect to find him, in the midst of his fellow-tenants in thanage. The statement that he owed "arrears of scutage" is not to be found in either roll.

Should Mr. Bird prove obdurate and contend that Robert son of Ralf (1202 and 1204) was not Robert son of Ralf de Trafford, we have but to

<sup>1</sup> *Ancestor*, No. 9, p. 71.

<sup>2</sup> As Mr. Bird observes of Robert son of Ralf, "no surname or locality is attached to him."

turn to a third list, on the roll of 1226, which has several names in common with those of 1202 and 1204.<sup>1</sup> I will here place side by side the entries of those names.

1202, 1204.	1226.
Henry de Melling	Henry de Melling.
Henry de Walton	Henry de Walton.
William de Radcliffe.	William de Radcliffe.
Roger de Middleton	Roger de Middleton.
Robert de Prestwich.	Robert de Prestwich.
Alexander de Pilkington	Alexander de Pilkington
Gospatric de Chorlton	Gospatric de Chorlton
Robert son of Ralph	"Robert son of Ralph de Trafford"
Ranulph son of Roger.	Ranulph son of Roger
Peter de Brindle	Peter de Brindle.
Henry de Holland	Henry de Holland.
Elias de Hutton	Elias de Hutton
Gilbert de Croft	Gilbert de Croft.
Adam son of Osbert	Adam son of Osbert.
Walter de Parles <sup>2</sup>	Walter de Parles. <sup>3</sup>

"In the light of this evidence I do not think the most" reluctant "critic will any longer deny" the identity of the Robert son of Ralph living in 1202 and 1204,<sup>4</sup> or the statement that he was father of Henry de Trafford who succeeded in 1205. I am glad to find that Mr. Farrer himself, though that identity seems to have escaped him, appears to have independently concluded that there was but

<sup>1</sup> Mr. Farrer has warned us that, though the list is on the roll of 1226, "some entries belong to the time of Henry II and Richard I, the rest to that of John" (*Lancashire Fines* [1899], p. 153, note).

<sup>2</sup> These names occur in one or both of the two lists. The place-names are given in their modern forms.

<sup>3</sup> These names are given in the same order as in Mr. Farrer's list (*Lancashire Inquests*, I, 136-141).

<sup>4</sup> This was the Robert who, according to the *Landed Gentry*, was "of full age at the time of the Conquest."

one Henry.<sup>1</sup> By establishing, myself, the above identity I may claim to have solved what Mr. Bird—after “a most thorough examination of the Trafford pedigree (especially the earlier portions, which are the most doubtful)”<sup>2</sup>—declared to be “the one serious difficulty in the history of the Traffords,” and one on which he preferred “to offer no opinion.”<sup>3</sup>

*Paulo mājora canamus.* Leaving Mr. Bird bewildered by the sight of well-known tenants in thanage where he would not “expect to find” them, let us grip this Trafford pedigree and settle it once for all. Henry son of Robert son of Ralf de Trafford succeeds in 1205 and dies in or shortly before 1221. Allowing for each generation five and twenty years, his grandfather would have succeeded about 1155. Let us even be liberal and make it 1150; it is common ground that in these matters one can only strike an average. This grandfather, “Ralf son of Randolph,” is mentioned in a single charter, the earliest known document relating to the family. There is nothing in the

<sup>1</sup> *Lancashire Fines*, I, 153. Mr. Croston writes, somewhat strangely:—“Mr. W. Farrer, in his book on the Lancashire Entries on the Pipe and Fine Rolls (pp. 170, 210), discards the steps Nos. 2, 4, and 7, and compresses the first seven steps into four, thus: 1, Ralph; 2, Robert, died c. 1205; 3, Henry died 1221; 4, Richard, died 1278. This would obviously carry us no further back than 1150 at earliest. I have, however, for literary (!) reasons, adhered to the form of pedigree adopted by the family and favoured by Mr. Bird” etc. (*History of Stretford Chapel*, III, 99, note). Neither the statement nor the title assigned to Mr. Farrer’s book is quite accurate. Mr. Farrer “discards” a second Henry between Robert and Richard, but that is the only change he makes in the pedigree down to 1221, the period with which we are dealing. With Ralf’s father he is not concerned.

I do not understand what is meant by “literary reasons” for a pedigree, but we may gather (pp. 96, note 2, and 97), that Mr. Croston looked with some suspicion on the earliest stages in that of Trafford.

<sup>2</sup> *History of Stretford Chapel*, III, 99.

<sup>3</sup> *Ancestor*, No. 9, p. 74.

charter to show that he was then lord of Trafford ; but, even if he was, the pedigree, we see, begins only somewhere about the middle of the 12th century. Here we have again the true starting-point of almost our oldest pedigrees, pedigrees of families which, not content with this exceptional antiquity, persist in tracing their descent from the Conquest or even from ' Saxon ' times. With these the Traffords also must henceforth fall into line.

Of any claim to an earlier pedigree there is, we have seen, an end. But I do not wish to suppress anything that Mr. Bird has urged in support of his efforts to claim a more remote origin for the house. He began by somewhat vaguely asserting that "The antiquity of this family is, in Lancashire, an article of faith."<sup>1</sup> No one would deny that the Traffords are among our ancient houses. But is it "an article of faith" that they were seated at Old Trafford before the Norman Conquest? That is the question. Even if it were, it is more notoriously "an article of faith" in Devon that "Crocker, Cruwys and Coplestone" were "all at home" when the Conqueror came, a belief of which Mr. Freeman made singularly short work.<sup>2</sup> It is also, we shall find, in Hampshire "an article of faith" that the Tichbornes were seated at Tichborne long before the Conquest, while in Kent and Sussex respectively there seems to be a firm belief in the pre-Conquest antiquity of the families of Dering and of Scrase.

<sup>1</sup> *Ancestor*, No. 9, p. 66.

<sup>2</sup> In his article on "Pedigrees and Pedigree-makers," where he pointed out that the Coplestone story had already been exposed by a local antiquary.

But in Lancashire we cannot trace, it seems, the existence of the pre-Conquest idea till "a quaint local poet of the Elizabethan age" enigmatically wrote :—

A triple foorded river shall direct thy ready way,  
Where thou shall find Antiquitie, the maker of the place,  
Whose name hath bene Tyme out Mynde, before the  
Conquest was.

But another "complimentary"<sup>1</sup> bard had written, even earlier,<sup>2</sup> in honour of the Stauntons of Staunton :—

The first Sir Mauger Staunton, Knight,  
Before Williame came in,  
Who this realme into one monarche,  
Did conquer it and winne.<sup>3</sup>

which seems to be the only evidence for the 'Saxon' origin of the Stauntons. It is the great advantage of dealing with the subject in a paper such as this, that one can set the Trafford claim in its right place among others, and see how the so-called "tradition" of a tenure older than the Conquest arose, almost as a matter of course, among these ancient houses, when men began to prize pre-Conquest tenure as a distinction.

The constant appeal to "tradition" in cases such as this compels one to insist upon the fact that it is absolutely worthless as evidence for facts of that remote period. It is to "tradition" that we are confidently referred for the history, at the Conquest period, of the Stourtons, of the Derings, of the

<sup>1</sup> The adjective is Mr. Bird's.

<sup>2</sup> To judge from his style.

<sup>3</sup> See below.



Bulstrodes : " tradition," we shall see, has even been invoked for the *status* in Saxon times of a family so modern as the Whatmans. Writing of the Traffords' " tradition of Saxon origin "—which they share with so many families—Mr. Bird speaks of my " prejudice against tradition as such " as " not quite in harmony with the scientific spirit," and claims that " there is a region, lying just beyond the frontier of recorded fact, which may be wholly barren for the student of the past if he be forbidden to use tradition for a guide, even where there is no other,"<sup>1</sup> that is to say, we are to use " tradition," not because it is likely to be true, but because a remote period might be " wholly barren " without it. Happily, it is Mr. Bird himself who, in " the Grosvenor myth," has demolished a pedigree resting on a really venerable tradition, a tradition in full existence more than five centuries ago. He there writes himself in the true " scientific spirit. "—

but the first question is, what evidence did Grosvenor produce in its favour. The answer is simple. For the tradition there is evidence enough and to spare ; for the truth of it, none . . . . . the tradition . . . . . was actually current at the time of the trial . . . . . I leave the abbot's pedigree for the present. We have seen that it rested simply on tradition : we have found that all the evidence is against it.<sup>2</sup>

In other words, when we come to test a " tradition " of no late growth, but of really venerable antiquity, we find, on his own showing, that it breaks down. The light which " tradition " affords in the " wholly barren " tract is that of an *ignis fatuus*.

<sup>1</sup> *Ancestor*, No. 12, pp. 47-8.

<sup>2</sup> *Ancestor*, No. 1, pp. 174, 176, 178.

I venture, in conclusion, to repeat what I wrote in the *Ancestor*, as finally disposing of any presumption in favour of the Trafford claim to a pre-Conquest tenure of Old Trafford.

Mr. Bird, it is true, urges that the Lancashire belief in the exceptional antiquity of the Traffords must be old because 'a quaint local poet' of the Elizabethan age, in *A Golden Mirror*, supports it in his "acrostic verses of a complimentary character upon the names of knights and gentlemen of that country" adding

"Now there were many old families then in Lancashire—Ashtons, Pilkingtons, and Worsleys, Standish, Molyneux and even Stanley: But it is only when Sir Edmund Trafford's name is the subject of his vision that our poet chooses Time for his interlocutor."

One verifies the reference and discovers, first, that the 'acrostic verses' relate, not to Lancashire, but almost exclusively to Cheshire, and then (not without some surprise) that of the six houses named by Mr. Bird, Stanley *alone* is dealt with by the author, and that as Strange, not as Stanley. I venture to submit, therefore, that it is somewhat misleading to put the case as Mr. Bird puts it.<sup>1</sup>

But, it may be urged, there is the 'thanage' argument; is there not something in that? Absolutely nothing whatever. Mr. Bird appears to have confused the holding of land 'in thanage' with descent in blood, from a 'thane'. The fact that holdings by thanage are found in the survey, *temp.* John, of Salford Hundred, does not, I assert, "suggest that many or all of 'the English thanes' had been left undisturbed." At Pendlebury, for instance, a carucate was held 'in thanage' because it had been so granted by John when Count of Mortain

<sup>1</sup> My point is that there is no such contrast as Mr. Bird's words imply between the poet's treatment of the Traffords and of the other families named by Mr. Bird. He has since admitted that this was "a piece of carelessness" on his part (*Ancestor*, No. 12, p. 42).

("to hold of us and our heirs.... in free thanage by the free service of ten shillings yearly"—Farrer's *Lancashire Inquests* p. 69); and Little Bolton in Pendleton (opposite Trafford Park) was held by the Boltons 'in thanage' because it had been so granted to William son of Adam by John when Count of Mortain (*Ibid.*, p. 71): therefore the holding of land 'in thanage' is no proof that it had not been acquired by a recent grant, though the absence of enrolment in the twelfth century makes it impossible, as a rule, to prove the fact of that grant.

If then 'tradition' and tenure in thanage are alike of no avail to prove that the Traffords held at Trafford before the Conquest, what remains? There remains nothing.<sup>1</sup>

Having now disposed of those cases in which claim is made to a definite pedigree beginning, in England, before the Conquest, I turn to those in which 'Saxon' descent is more or less vaguely asserted. By this assertion, as we said at the outset, it is obviously meant, not that, in common with the mass of our people, the house belonged to the

<sup>1</sup> *Ancestor*, No. 12, p. 79. The story connected with the Trafford crest has been more appropriately dealt with in the paper "Tales of the Conquest."

As I am anxious not to press any argument unduly, I relegate to this footnote such inference as can in my opinion be drawn from the Traffords' names, though it does not, to say the least, afford any support to the theory of their native origin. "The only clue for our guidance is that of the Christian names borne by their earliest ancestors; and these we have seen are distinctively foreign. This appears to me to form a very strong presumption that they were not of English origin. Take the case of their neighbour, Roger son of William, who held 'in thanage' Reddish in Manchester; his ancestor was Orm, the son of Ailward 'living in the time of Henry I', founder of the Kirkbys of Kirkby Ireth. Or again, take the Singletons of Singleton, descended from Huck of Singleton, whose sons Uchtre and Siward were living under Henry II, and apparently under Richard I. Lastly, take the Traffords' neighbour, Gospatric, lord of Chorlton, living in the days of John. One could easily adduce other instances of the retention of native names by men of native origin for some time after the Conquest. Had the Traffords been of English origin, it is most improbable that they would have adopted so early as the eleventh century so foreign a name as Ranulf, in view of the slowness with which such names were adopted in the north of England". (*Ancestor*, No. 10, p. 80). The Ashtons of Ashton (under Lyne) were, for instance, descended from Orm de Ashton (living 1200-1202), whose name proclaims him as of native stock.

conquered race, but that it held its lands, or at least its social position, even before the Conquest.

Mr. Freeman, who was only writing for a Review, could hardly be expected to investigate each case on its merits. To do so requires in most of these cases a separate, often a lengthy, enquiry involving (*experto crede*) no small amount of time and labour. And yet, without that detailed enquiry, it is not possible to treat the subject with the thoroughness for which it calls. He was forced to leave a loophole for "quite exceptional" pedigrees, which enables every claimant who escaped his swashing blows to allege that his own is one of them. The claims he pilloried are dropped; but others must share their fate.

That his task was incomplete is evident from his own words:

When a pedigree goes back to the eleventh century, or to the early part of the twelfth, things are altogether changed. Some pedigrees which go back to that time are undoubtedly true, some, whether true or false, are at least not palpably false; *they could not be refuted by the general historian who does not specially give himself to genealogical or local study.*<sup>1</sup> But these certain and probable pedigrees are quite exceptional. The mass of pedigrees which go back to those times are, by the man who knows those times, at once cast aside as false on the face of them. They need no examination; their very statement shows that they are impossible.<sup>2</sup>

That is the point that we have to remember.

<sup>1</sup> The italics are mine.

<sup>2</sup> *Cont. Rev.* XXX, 14. This is the answer to Mr. Bird's criticism on my speaking of the "grotesquely impossible tale" of pre-Conquest Traffords of Trafford in 'Burke's Peerage.' He complains of my "Jedburgh justice—condemnation first and evidence afterwards." I happen to be a "man who knows those times."

There are tales such as those the peerage-books tell, or told, of the Ashburnhams, the Berties, Lord Derby's Norman ancestor, or the pre-Conquest Traffords that we can reject at once as involving either obvious anachronisms or absurdities of geography or nomenclature. On the other hand there are claims in which there is nothing inherently impossible, but the evidence for which must be examined before they can secure acceptance. As Mr. Freeman elsewhere put it ;

The family may really be descended from persons who did hold lands, perhaps even the same lands, before the Conquest. There is nothing impossible, nothing absurd in the claim itself ; only it is a claim which must always be very hard to make out.<sup>1</sup> And in the shape in which the claim is commonly put it is absurd and impossible.

That " shape " is to " represent a family, as such, *with a hereditary surname*,<sup>2</sup> as holding lands before the Norman Conquest." Mr. Freeman made, accordingly, short work of the Tollemaches, who had " flourished with the greatest honour, in the co. of Suffolk, since the first arrival of the Saxons in England, a period of more than thirteen centuries." He similarly dismissed the claim of the Berties to have " first landed in England in company of the Saxons ; " but he seems to have been unaware that of the

Wardlaws, Cardinal Wardlaw compiled a genealogical account, from their first coming from Saxony into England about the beginning of the sixth century, up to his own time ; a copy of which was in the royal library

<sup>1</sup> *Ibid.*, p. 21.

<sup>2</sup> The italics are mine.

of France until the Revolution ; and according to family tradition, the elder branch of the house, the Wardlaws of Torrie, had also a copy, which was carried down to his own time, the close of the fifteenth century, by Sir Henry Wardlaw.

Cardinal Wardlaw lived early for a genealogical writer ; he is said to have held that honour from 1361 to 1387. Perhaps, however, his effort was posthumous, as must have been that of Sir Henry Wardlaw, " the genealogist of the family," who died, the pedigree informs us, before 1421, but brought the family history " down to his own time, the close of the fifteenth century." All this is still to be read in the account, in ' Burke's Peerage ' of " this Anglo-Saxon family."

Let us keep, however, to the point that a mere vague assertion is of no value whatever. To quote again from Mr. Freeman :—

Such a claim is in no way absurd in itself ; the story is perfectly possible ; we only ask for the proof. Show us the proof ; make out every step by authentic documents ; then we will believe. Without such a proof we will not believe.<sup>1</sup>

Even as I write, there comes to hand an excellent instance in point. From the *Daily Mail* I take the statement ;—

Lord Clanmorris traces his descent back to the Saxons, the original seat of the family being at Sutton Bingham in Somerset.<sup>2</sup>

It is only a week since one read of the other ennobled branch in that fruitful ' personal and social ' column :—

<sup>1</sup> *Cont. Rev.* XXX, 22.

<sup>2</sup> *Daily Mail*, 22. Dec. 1908.

Lord Bingham, son and heir of Lord Lucan, etc... the Binghamms are of old Saxon stock, and were originally seated at Sutton Bingham, Somerset. Sir John Bingham was knighted by Henry I.<sup>1</sup>

This extremely definite information is derived from ' Burke,' where the pedigree of Lord Lucan, the head of the Irish Binghamms, formerly began, and now begins, as follows :—

*Old Version.*

The family of Bingham is of Saxon origin and of very great antiquity. It was originally seated at Sutton Bingham, in the county of Somerset ; from whence it removed, during the reign of William the Conqueror, to Bingham's Melcomb, in the county of Dorset, where a branch of the family continues still to reside.

John de Bingham received the honour of knighthood in the reign of Henry the First ; and from him descended lineally :—

Now this is one of those delightful cases in which nothing more is needed than to turn from ' Burke's Peerage ' to ' Burke's Landed Gentry.' In the latter work we read of the parent stock, the ancient house of Bingham of Melcomb Bingham, that—

the family of Bingham, *possibly of Norman origin*,<sup>2</sup> was originally seated at Sutton Bingham, Somerset.

*New Version.*

The family of Bingham, of Saxon origin, was originally seated at Sutton Bingham, Somerset. John de Bingham, Knt. *temp.* Henry I. was direct ancestor of—.....

<sup>1</sup> *Evening Standard & St. James Gazette*, 14. Dec. 1908.

<sup>2</sup> The italics are mine.

Could we have a better instance of that "vague assertion" which is really sheer guesswork, than this description of a family, in one place, as "of Saxon origin," and in another as "possibly of Norman origin" ?

And the reason for this uncertainty is quite simple ; it is that the Binghams cannot be traced further back, it appears, than the 13th century. It can only, therefore, be sheer guesswork to describe them either as 'Saxon' or as 'Norman.' One does not look for hypercriticism in the normal county history when dealing with an extant county family, but Hutchins' *History of Dorset*, a very valuable work, is candid enough in its treatment of the question. The Bingham pedigree, we there discover, is one of a familiar class, being "set forth and signed by Robert Cook Esq. Clarenceux, A.D. 1580."<sup>1</sup> But even that great parent of pedigrees and rascally King-of-Arms did not attempt to take it back to Saxon times. He began with an alleged Sir John Bingham in the days of Henry I. Hutchins, however, is not prepared to accept so much as this. He points out that "The earlier names in it [the pedigree] have certainly an apocryphal air and are not corroborated by any evidence." The earliest mention he could find in records was of the year 1245, which tallies with the fact that Robert de Bingham, from a brother of whom descent is claimed, was bishop of Salisbury from 1229 to 1246. For it may be to this prelate that is due the original settlement of the family in the south-west of England. Bingham

<sup>1</sup> *Op. cit.* IV, 374.



itself is in Notts, and a churchman there born would, after the fashion of his class, take his name therefrom. In Bingham's Worth, Bingham's Melcomb, and Sutton Bingham, this house has stamped its name upon the map of England. But although the fact testifies to its antiquity, as houses go, we have seen that its 'Saxon' origin is a guess, and its status at the Conquest a myth.

Let us take some other ennobled families whose claims are similarly vague. Of the Pelhams, earls of Chichester (and of Yarborough) we read—

The surname of Pelham was assumed from a lordship in Hertfordshire.... This lordship of Pelham is recorded to be part of the possessions of Walter de Pelham in the 21st of Edward the First, and it is believed that his ancestors held it prior to the Conquest.

On what ground is this believed, when no attempt is here made to carry back this ancient house to within even two centuries of the Norman Conquest? So also with the Wingfields (Viscounts Powerscourt) of whose origin this version was formerly found in 'Burke'—

The surname of Wingfield borne by this noble family is derived from the manor of Wingfield, in the county of Suffolk, where they had a residence before the Conquest, denominated Wingfield Castle.<sup>1</sup>

Now, indeed, we only read that this family "is stated to have been seated at Wingfield, co. Suffolk, before the Conquest". Why so stated we are not told. After citing Garter Anstis to the effect that "it may be doubted whether it (Wingfield)

<sup>1</sup> This claim is dealt with and shown to be baseless by the editor in *The Ancestor*, No. 8, pp. 210-1.

was the seat of this family before the time of Sir John Wingfield, since the patronage and advowson of that place was in Sir Richard Brews, in 1302, 1323, and 1329," the 'Landed Gentry' inconsequently adds that "there are pedigrees of the Wingfields which give them possession of the Castle of Wingfield in the time of William the Conqueror." Again, the family of Stonor of Stonor (now Lord Camoys) "is stated to have been in possession thereof before the Conquest," according to 'Burke's Peerage.' Yet there seems to be no pedigree further back than the days of Henry III,<sup>1</sup> and even this date is untrustworthy.

With the famous case of the Stourtons of Stourton I need not again deal in detail, having already done so.<sup>2</sup> I then showed that, after Mr. Freeman had smashed their alleged ancestor at the Conquest and had shown him to be purely fictitious, he was banished for a time from 'Burke's Peerage,' where the pedigree thenceforth began only in the 14th century. But in 1900 this Botolph was boldly re-introduced, as the direct ancestor of his namesake, Lord Mowbray Segrave and Stourton. And there he continues to flourish and to marry, "according to the ancient pedigrees, Anne, dau. of Earl Godwin, sister of King Harold II." This is an outrage on English history; but what is history compared with a pedigree "ratified and confirmed under the Seal of the College of Arms," 1721, in which, as I showed, this marriage was duly affirmed.

<sup>1</sup> cf. Burke's *History of the Commoners*, II, 440. The real founder of the family appears to have been Sir John de Stonore, chief justice of the Common Pleas, who died in 1354, after acquiring large estates.

<sup>2</sup> *Studies in Peerage and Family History*, pp. 50-61.

Domesday affords proof positive that Stourton changed hands at the Conquest, so that the tale of the Stourtons having held it before as after that event is known to be false. In the great family history, however, which appeared some nine years ago, a pedigree and a tenure of Stourton extending far beyond the Conquest was claimed without hesitation. Even under Alfred deeds of valour were performed by an earlier Botolph, lord of Stourton,—for all of which 'tradition' is deemed sufficient authority. Let me here again insist on the absolutely worthless character of such 'tradition' as this, which anyone can vouch for anything he likes. And let me also observe, at the risk of wearying the reader, that, as in the case of so many families, the first Stourton on record is he who appears in the great returns of knights (1166)<sup>1</sup> no less than a century after the Norman Conquest.

Of the Wallops (Earls of Portsmouth) we still read that "this ancient family was seated at Wallop, in the county of Hants, at a period antecedent to the Conquest," ('Burke's Peerage'), though nothing has been discovered about them before the reign of King John.<sup>2</sup> The Chetwodes of Chetwode (Baronets) are a house of exceptional antiquity, of which 'Burke' at one time stated that "some (accounts) trace it antecedently to the Conquest." We have now the more confident assertion that "all authorities" do so, though Domesday proves that Chetwode was lost, at the Conquest, by its

<sup>1</sup> *Ibid*, p. 60.

<sup>2</sup> The early Wallop pedigree has not yet been satisfactorily worked out, but the existing family is said to have married the heiress of the Wallops, *temp.* Edward I, and taken their name.

English lord (a man of note) and bestowed by the warrior bishop of Bayeux on a Norman follower. Another ancient house is that of the Cheshire Leighs, but the statement that Lord Leigh's ancestors were of "High Leigh, co. Cheshire, where they were seated before the Conquest" ('Burke's Peerage') seems to be unsupported by any evidence or even by any pedigree to so early a date.<sup>1</sup> The Stricklands of Sizergh also were an ancient house; but when 'Burke's Peerage' informs us under Strickland of Boynton (Baronets) that "the parent stock of this family was settled, previously to the Norman Conquest, at Strickland," we have only to turn to the 'Landed Gentry' to learn, under 'Strickland of Sizergh,' that the "first of the name of Strickland met with is in the reign of King John." So, here again, to dispose of the statement in 'Burke's Peerage,' we have only to refer to the statement in 'Burke's Landed Gentry.'

Let us turn to two houses, victims of Mr. Freeman's onslaught. Tollemache<sup>2</sup> now no longer accompanies "the Saxons," on their "first arrival in England," tolling a bell to proclaim the fact. But he still (under Lord Dysart)<sup>3</sup> "claims Saxon descent." As a matter of fact, 'Talemasche' first appears, in the twelfth century, among the followers of the Oxfordshire St. Johns, and early in the next century was holding Bentley in Suffolk by serjeanty. The name, evidently a nickname, suggests Norman

<sup>1</sup> See Burke's *History of the Commons*. IV, 530, where, moreover, this family is shown as paternally Venables, one of whom married a Leigh heiress in the 13th century.

<sup>2</sup> *Cont. Rev.* XXX, 27-8.

<sup>3</sup> Both Lord Dysart and Lord Tollemache are descended from the Tollemaches in the female line only.

origin. The family of Wake, their fellow-sufferers,<sup>1</sup> had not made up its mind, when Mr. Freeman wrote, whether to be Norman or Saxon, and ' Burke's Peerage ' endeavoured to combine the two versions, the great point being to suggest that they were " of importance prior to the Conquest." Since the historian tossed aside " this trumpery piece of genealogical fiction," we are only told that the " Wakes claim Saxon origin." Why they do so it is hard to say, for their alleged, but imaginary, descent from Hereward is only through a succession of females, while I have been able to show that this ancient feudal house can trace its pedigree back to a Norman in the days of Henry I.

If some of our " Saxon " houses prove to be really Norman, one at least can be shown to be probably of the great Breton stock.

In old editions of Burke's ' Peerage ' one found under ' Stafford ' this delightful story.

Weever, in his work on ' Ancient Funeral Monuments ' has these observations :—' This name hath been of exemplarie note before the Conquest, if you will believe thus much that followeth taken out of the pedigree of the Jerninghams by a judicious gentleman : Anno MXXX, Canute King of Denmark and of England, after his return from Rome, brought divers captains and souldiers from Denmarke, whereof the greatest part were christened here, in England, and began to settle themselves here ; of whom Jernegan or Jernengham, and Jernihingho, now Jennings, were of the most esteeme with Canute, who gave unto the said Jerningham certaine manors in Norfolk ; and to Jennings certaine manors lying upon the sea-side, near Harwich, in Suffolke, in regard to their

<sup>1</sup> *Ibid*, pp. 31-3.

former services done to his father Swenus, King of Denmark."<sup>1</sup>

This *exordium*, however, was, as usual, inconsequently followed by a pedigree beginning only with a man who lived "in the reigns of King Stephen and King Henry the second." That is to say, we have, here again, a pedigree beginning about the middle of the 12th century.

I have elsewhere<sup>2</sup> gone into the question of "the origin of the Jerninghams" and have shown that the pedigree has been compiled by confusing two distinct families of the name in the 12th century, one in Yorkshire, the other in Suffolk. Each of them took the name from an ancestor who was christened by the Breton name of Jarnegan, and the Suffolk house, from which the Jerninghams are descended, gave its name to Horham Jernegan and Stonham Jernegan. The pedigree from Hubert 'Jernegan,' who succeeded in or about 1183 and died some twenty years later, seems to be unquestioned. His existence is proved by the public records, and he occurs in the 'Red Book of the Exchequer' as a tenant of the Honour of Eye.<sup>3</sup>

It must however be confessed that when a pedigree does not begin till the latter part, or at

<sup>1</sup> This is now cut down to a statement that the family "is stated to have been originally Danish and the name *Jernegan*. Weever in his *Ancient Funeral Monuments* says "this name hath been of exemplarie note before the Conquest."

<sup>2</sup> *Ancestor*, No. 12, pp. 186-7.

<sup>3</sup> *Op. cit.*, p. 411. I was misled at first by the marginal date against this list in the unfortunate official edition into supposing it to belong to 1166, but, buried away in a footnote, is the statement that it "is a later addition" in the Black Book. From the names of "Robertus filius Rogeri" and of "Comes Rogerus" I should assign it to the days of Richard I, with which date also the name of "Willelmus de Glanville" would tally. This, it will be seen, harmonises well with the date assigned to Hubert Jerningham.

any rate the second half of the twelfth century, a Christian name no longer affords the same decisive evidence as it would have done a century before. One has always to allow for the fashion, already referred to, of bestowing on the children of English houses Norman or other foreign names. In other words, we find ourselves, even at that early date, unable even to predicate of a family, with any certainty, that it was of 'Norman' or of 'Saxon' origin, however glibly its origin is alleged. An instance in point is afforded by the house of (Leveson) Gower, now Dukes of Sutherland. Of this family, whose baronetcy dates from 1620, and who were raised to the peerage in 1703, 'Burke' still informs us that

"All our antiquaries coincide in..... giving it an Anglo-Saxon origin; but they differ as to the identity of its founder; some tracing that honour to sir Allan Gower, Lord of Sittenham in Yorkshire, and high sheriff of the county at the period of the Conquest; while others name William Fitz-Guyer, of Sittenham (*sic*), who was charged with a mark for his lands, in the sheriff's accounts, anno 1167."

Now it is safe to say that no such sheriff of Yorkshire as "Sir Allan Gower" is known "at the period of the Conquest," and that, even if he were, his name would prove that he was of alien birth, but William "filius Guhier" (or "Guher") is a real man, who appears in possession of Stittenham on the pipe-roll of 1167 (p. 95). This, however, was a full century after the Norman Conquest, when we cannot safely say what the origin of his line had been. All that we can assert is that the

name he bore was not ' Saxon ', but Norman.<sup>1</sup>

We similarly find case after case of families which can boast of a clear pedigree, and even of continuous tenure of land, back into the 12th century, not content with this distinction, but claiming " Saxon " origin. We read of the Fulfords of Fulford in ' Burke's Landed Gentry ' that they " are of Saxon origin ; " and yet it is only claimed that at Fulford, " as it appears by records, as well as registries (*sic*) in the Coll. of Arms, they were seated in the time of Richard I. " Now Richard I did not succeed till more than 120 years after the Norman Conquest. So also, the Gatacres of Gatacre are assigned a pedigree beginning only in the days of Henry III, and yet their patriarch held lands which, it is stated, " had been obtained by his ancestor by grant from Edward the Confessor. " <sup>2</sup> Again, we read of the Worcestershire Hornyolds (now represented only in the female line) that " The family.... is of Saxon origin and possessed lands in Worcestershire in the 13th century. " <sup>3</sup> Why " of Saxon origin " if it cannot be traced back beyond the 13th century ? The Hudlestons of Hutton John, we learn, " trace their pedigree from Saxon times, " but how they do so it seems to be considered quite superfluous to explain. <sup>4</sup>

<sup>1</sup> Duke Robert of Normandy speaks of a ' Goherius ' as one of his barons in 1088, and a Turstin ' Goherius ' occurs in Normandy in 1157 (See my *Calendar of Documents preserved in France*, pp. 39, 268). Some confusion has been caused by the fact that Gower in South Wales occurs as ' Gouherium ' (Ib. 106) or ' Goher ' (*Red Book of the Exchequer* p. 761), which gave rise to " de Goher ", a wholly distinct surname.

<sup>2</sup> *Op. cit.*

<sup>3</sup> *Op. cit.*

<sup>4</sup> *Op. cit.* Investigation, however, is rewarded by discovering in ' Burke's History of the Commons ' (II, 582) that at ' Hodelston ' in Yorkshire " they



Of the Crofts of Croft Castle in Herefordshire, whose baronetcy dates from 1671, and in whose possession Croft remained till the close of the 18th century, we read in ' Burke's Peerage,' that

The family of Croft, which is of Saxon origin, settled in Herefordshire at a very remote period, . . . and in Domesday Book Bernard de Croft is mentioned as holding the lands of Croft, which his descendants inherited, etc.

Now the thing that is here quite certain is that if the name of the lord of Croft in 1086 was Bernard, he cannot have been "of Saxon origin." But a further criticism is that Croft appears in Domesday as held, not by ' Bernard de Croft ', but by ' Bernard ' simply. As there were several other manors in the county then held by ' Bernard ', there is nothing by which to identify the holder of Croft, or to show that he is not the same Bernard as in one or more other entries.

Again, the Pilkingtons of Pilkington and Rivington, in Lancashire, from whom claim descent the Yorkshire baronets of the name, had a pedigree which, in Mr. Farrer's opinion, could be just carried back into the 12th century. But, not content with this, they wished to be Saxon thegns and even annexed the Conquest story which the Traffords claimed for themselves. The garrulous but delightful Fuller repeats the story. As we read in ' Burke's Peerage ' :—

were seated for several generations antecedently to the Conquest. The pedigree begins with an Adam, and proceeds, through four subsequent descents (John, son of Adam, Richard, son of John, Richard son of Richard,) all in Saxon times, etc." To these pre-Conquest Hudlestons—John, Richard and Richard—we may apply that "Jedburgh justice" which Mr. Bird has denounced in the case of the pre-Conquest Traffords. That is to say, we may class them, on the strength of their names alone, among fabulous things.

Fuller says that the Pilkingtons were originally of Rivington, in the county of Lancaster, and a right ancient family; that they were gentlemen of repute in the shire before the Conquest, at which time the chief of the house, being sought after by the Norman soldiery, was fain to disguise himself as a thrasher in a barn etc.<sup>1</sup>

With the usual inconsequence, however, 'Burke' proceeds:—

The first of the family we find upon record is Leonard Pilkington of Pilkington Tower in the County of Lancaster, living in the reign of the first Henry.

Here, precisely as with the Bingham, we find that no attempt is made to trace the pedigree beyond the days of Henry I; while, precisely as in that case also, the first ancestor on record proves to be unknown to records. There is an Elizabethan flavour about his name, Leonard, which is suggestive as to his origin.

There are two ancient houses which cannot strictly be included within the scope of our enquiry, for the Swettenhams of Swettenham became extinct in the male line in 1788, while the male line of Staunton of Staunton failed much earlier, the estate passing subsequently through a succession of females. One may note, however, the confident assertion in 'Burke's Landed Gentry' that

The family of Staunton, one of great antiquity, is traced from the time of the Conqueror, and there is no doubt of their having been settled in co. Nottingham in the time of Edward the Confessor.

Oddly enough, the earlier version (in Burke's *History of the Commoners*) only claims that the pedigree

<sup>1</sup> See Vol. I, p. 316.

"can be traced from the time of the Conqueror" and abstains from the further assertion.<sup>1</sup> The origin of the latter, clearly, is the old doggerel pedigree there quoted.

O champion cheefe and warlike wight,  
Of Staunton's stocke the pryme  
The and thy sequel I must blase,  
And pedegrewe define.

The first Sir Mauger Staunton, Knight,  
*Before Williame came in,*  
Who this realme into one monarche,  
Did conquer it and winne.

The obvious antiquity of this doggerel might give it, from what we have seen, some authority in the eyes of Mr. W.H.B. Bird;<sup>2</sup> but Sir Mauger's name, unfortunately, is proof positive that he was not at Staunton "before Williame came in." And as to the "regularly traced" pedigree, even from the Conquest, it is certain that a man who died in 1326 cannot have been, as alleged, only five generations removed from Staunton's "champion cheefe." Again, Swettenham of Swettenham is yet another of those cases in which the pedigree put forward does not extend further back than the 13th century, and yet in which 'Saxon' descent is most confidently claimed. Indeed it is asserted that the family "preserved a male succession from the Saxon times." And what is the evidence? "Tradition."

This very ancient family, which, according to tradition, was seated at Swettenham long antecedent to the Conquest,

<sup>1</sup> *Op. cit.*, I, 526.

<sup>2</sup> See pp. 72, 74 above.

and had a confirmation of the estate, *temp.* William Rufus, to the then Saxon possessor, derives its surname from a compound of two Saxon words, *sweet*, pleasant or agreeable, *Ham*, a dwelling place or village, etc.

I shall have occasion below (p. 103) to revert to this etymology.

Another of our *von* families which claims Saxon origin is that of Hanbury. Several extant families of the name claim descent from the Hanburys of Hanbury, co. Worcester, of whom we read in the 'Landed Gentry,' under Hanbury Williams, that

The Hanburys are reported to have had a settlement in co. Worcester prior to the Conquest, and to have been of Saxon descent.

One can only say that Domesday, dealing with the Worcestershire Hanbury, knows nothing of them, and that this vague "report" may be very safely dismissed. We pass from a "reported" to a "stated" settlement.

The Sewins, now Salweys, are of Saxon origin, and are stated to have been settled at Cannoc (the present Kanke) co. Stafford, at a period antecedent to the Conquest.

How can one deal with these nebulous statements? Where is 'Kanke'? What is there to show that the Salweys were originally Sewins? Certainly not the pedigree vouchsafed us, which begins, apparently, with a Salwey about the middle of the 14th century. There are families, however, of which the pedigrees do not begin till later, by a good deal, than this, and yet which claim to know their pre-Conquest ancestry.

There was a time when the Berneys, holders of a baronetcy of 1620, claimed, in ' Burke, ' that their " ancestors, at the period of the Conquest, were lords " of Berney, Norfolk. But of recent years we were only told that " This very ancient family claims to be of Saxon origin. " Now, however, there is a further change, and the family " claims to be of Saxon or *probably*<sup>1</sup> *Norse* origin. " As the pedigree that follows begins only in " the time of Edward III, " one does not see why further guesses should not follow *ad infinitum*. With another Norfolk family, whose name is similarly local, I had not proposed to deal, for its claim to a pre-Conquest origin is now but vague in ' Burke. ' Recently, however, and somewhat unexpectedly, it has been thrust upon our notice. I here place side by side the old version of the Wyndham origin which appeared under Egremont in ' Burke's Peerage ' and that which now appears in ' The Landed Gentry. '

This noble house deduces its descent from *Ailwardus*, an eminent Saxon, of the county of Norfolk, who, being possessed of an estate there, in Wymondham (subsequently called Wyndham), assumed, soon after the Norman Conquest, the surname of Wyndham. From this personage lineally descended, through a long line of illustrious ancestors etc.

This family claims descent from Ailwardus, an eminent Saxon of Norfolk, who, being possessed of an estate there, in Wymondham (subsequently called Wyndham) is stated to have assumed, soon after the Norman Conquest, the surname of Wyndham.

<sup>1</sup> The italics are mine.

It will be observed that in the Landed Gentry the *exordium* is somewhat modified.

In the pulpit, however, it is not. "In the pulpit?" the startled reader may, not unnaturally, enquire. In no less lordly pulpit than that of Rheims Cathedral. At the recent solemn *triduum* in honour of Joan of Arc, the selected preacher was Canon Wyndham (of Westminster Cathedral). In the great congregation were cardinals, bishops, and other dignitaries of the church.

"After incidentally mentioning that he came of a family that was settled in Norfolk before the Conquest, Canon Wyndham said"—

among other things, in the course of his sermon, "Un de mes aieux combattit à la bataille de Poitiers." <sup>1</sup> I am not acquainted with the etiquette, in these matters, of the Roman church, but one can hardly imagine an Anglican clergyman proclaiming, at the outset of his sermon, that his family had been settled in a certain county even before the Conquest, or informing his congregation that one of his ancestors had fought at the battle of Poitiers.

The Wyndham story obviously rests on the evidence of "Ailwardus," that "eminent Saxon," who held an estate in Wymondham. But in Domesday we look in vain for this "eminent Saxon," whether in the days of Edward or in the days of William. It is only with infinite trouble that we run him down at last. The proof of his

<sup>1</sup> See report of the sermon (17 July) in *Tablet* of 24 July, 1909, p. 136, where a footnote explains that the ancestor in question was "Sir Richard Wyndham Knt."

existence is a charter of William d'Aubigny ("de Albini") to Wymondham Priory, among the witnesses to which are found "Ailwardus de Wymundeham et filii ejus, Ricardus, Paganus, etc, Edricus de Wymundham." But, in the first place, the charter can be dated as not earlier than June 1121, when Ebrard, bishop of Norwich (who was present at its granting) was consecrated,<sup>1</sup> so that when we do meet with Æthelward ("Ailwardus"),<sup>2</sup> it is *fifty five years at least* after the Norman Conquest. And, in the second place, he cannot have borne, at this date, an hereditary surname, and was merely styled "of Wymondham" from the place of his abode. For all that we can see, Edric "of Wymondham" might have been claimed as the ancestor instead.

But here again we note the singular fact that the actual pedigree given in 'Burke'<sup>3</sup> begins only some 250 years after the Conquest, when "William son of Ralph de Wimondham was possessed, 10th Edward II, of the manors of Crownthorpe and Wicklewode, Norfolk." And, alas, we find that even this statement, comparatively modest though it is, will not bear investigation. The official evidence of *Feudal Aids* confirms that of the local historian, and proves that neither of these manors was held by the Wyndhams at the time. It is strangely difficult, indeed, to find satisfactory information on the history, at that period, of this ancient and distinguished house. Indeed, although

<sup>1</sup> The charter also mentions Queen Adeliza, who was not married to the King till this year.

<sup>2</sup> Compare p. 7 above.

<sup>3</sup> In "Brydges' Collins" an actual pedigree is traced from 'Ailwardus', but this seems to be now dropped.

in *Feudal Aids* the Norfolk returns are very full and extend down to the year 1428, there is not a Wyndham to be found in them. It appears to have been only later in the reign of Henry VI that the family acquired their manors in Crownthorpe, Wicklewood, and Felbrigg.

With regard to the ancestor who fought at Poitiers, a Richard de Wymundham is mentioned early in 1356 as going to Brittany with the Prince of Wales, but I cannot find proof that he fought at Poitiers or that, even if he did, he was one of the Norfolk house.<sup>1</sup> The Norfolk Wymondham was not the only place of its name in England, and the family, probably, would not claim Richard de Wymondham, a burgess of Reading (1348), Adam de Wymondham, a London mercer (1350), or John de Wymundham, a London ironmonger (1310), as among their ancestors. One may fairly, therefore, ask for proof that the warrior of Poitiers was so. I would again, however, remind the reader that a landowning pedigree extending even to the 15th century is now a rare distinction.

Another Roman ecclesiastic, Father Bernard Vaughan, has been seizing the rather unfortunate occasion of his opening a bazaar "on behalf of the church of the Sacred Heart," for denouncing as "lunatics" those who said that Roman Catholics had "changed." To those who are acquainted with the invocations of our ancient parish churches "the Sacred Heart," surely, has a somewhat unfamiliar sound. Nor would "the church of the Im-

<sup>1</sup> No Wyndham is to be found in the index to General Wrottesley's *Crecy and Poitiers*.



maculate Conception," with which one associates his well-known sermons on the sins of London Society, have sounded more familiar to the ears of our English forefathers. Urging, however, that his hearers "should ask the old Catholic families that question," he proceeded: "My family has been here some twelve hundred years nearly, and I don't think we have ever changed our religion (laughter)."<sup>1</sup> The laughter, one presumes, applies to the latter statement only; but as to the former, the Vaughans of Courtfield do not even claim a more remote ancestor than "Henry (*sic*) Fitz Herbert," chamberlain to Henry I, "the first of his family born in England."<sup>2</sup> If they can make that claim good, mere Protestant arithmetic would give them a pedigree in England of about eight centuries, not of "nearly" twelve. Another "fact," however, followed immediately on this. The speaker "described the English churches in the time of his youth, when over the altar, instead of the Cross, was seen the Arms of England, supported by the Lion and the Unicorn (laughter). That was a fact."<sup>3</sup> I myself have seen the royal arms in my youth, but in their historic place over the chancel arch. They replaced the rood on its screen at the Reformation, and were afterwards placed on the chancel arch.

The newspaper scribe, in his passionate craving for 'pre-Norman' lineage, outstrips at times the generous assumptions covered by the name of Burke. One draws from that unfailing well of

<sup>1</sup> *The Yorkshire Weekly Post*, 27 Nov. 1909.

<sup>2</sup> *Burke's Landed Gentry*.

<sup>3</sup> *Yorkshire Weekly Post*, *ut supra*.

genealogical truth, the 'Social and Personal' column, this bucketful of nonsense.

Lord Welby's lineage dates back to pre-Norman times, and in those days one Rannulf was feudal tenant of Guy de Credun, in Wellebi, near Grantham, and a century later John de Wellebi figures in the records as holder of one and a half knight's fees under Maurice de Crum.<sup>1</sup>

To Rannulf and to Guy, as feudal landowners in "pre-Norman" England, one promptly awards that 'Jedburgh justice' which, in the similar case of Trafford, moved Mr. Bird to wrath. For this anachronism, however, 'Burke' is not responsible. But it may surprise the reader to learn that 'Credun' and 'Crum,' which are both taken from that gorgeous work, represent alike the name of the noble and ancient Angevin house of Craon. It is, moreover, to be feared that, in spite of 'Burke's' appeal to the evidence of Domesday Book, the actual Welby pedigree begins far later. Careful scrutiny of the 'Burke' lineage reveals the fact that the earliest ancestor from whom actual descent is claimed was a "collector of subsidy in Denton, 1523," and that the jejune pedigree for the next century or so suggests a somewhat modest social position. That the family derives its surname from the local place-name, Welby, is, of course, obvious enough, but as with Wymondham (Wyndham) the fact is no proof that it descends from men who, in the 12th century, were known as "of (*de*) Welby."

It is "an article of faith," as Mr. Bird would say, with some people, I believe, in Sussex that

<sup>1</sup> *Evening Standard and St. James Gazette*, 4 Aug. 1909.

the Scrase family is 'Danish.' In 'Burke's History of the Commoners' we duly read that "The family of Scrase, originally of Danish extraction, held lands in Sussex before and at the period of the Norman Conquest, as appears by the general survey" (IV, 279). Yet a well-known Sussex antiquary, Mr. M.A. Lower, though loth to reject the tale, had to confess that—

According to an ancient tradition preserved in this family and sanctioned in the official books of the Heralds, the Scrases came from Denmark and held lands in Sussex before and at the time of the Conquest. So far, however, as I have been able to investigate the matter I find no documentary evidence of this statement.<sup>1</sup>

Quite so. Domesday, most certainly, ignores the Scrase family. Mr. Lower had further to confess that the pedigree begins only with Richard 'Scrasce,' who died in 1499, and whose life, therefore, only takes us half-way back to the Norman Conquest! The earliest mention even of the name was, he added, on a subsidy roll of the 14th century.<sup>2</sup> Later still, in 'the Landed Gentry', begins the pedigree of Thistlethwayte, which only starts about the end of the 16th century. And yet the family is definitely stated to be "of Saxon origin."

Another family which, like the Scrases, is confidently claimed as of 'Danish' origin is that of Copinger. At the head of the 'lineage' of Dr. Copinger in "Burke's Landed Gentry" (1906) we read that

<sup>1</sup> "Genealogical memoir of the family of Scrase" (*Sussex Arch. Coll.* VIII, 1.)

<sup>2</sup> In a subsequent article (vol. XXIV, p. 17), however, he wrote that the name is found on the Hundred Rolls, and that the Danish descent is "sanctioned somewhat by a note in the Heralds' Visitation of 1634."

The family of Copinger is of great antiquity in the county of Cork, having originally come from Denmark in the 10th century.<sup>1</sup>

Yet the actual pedigree begins only in the days of Elizabeth.

In "Burke's Commoners" (1835) we similarly read that the Copingers, "like the Jerninghams<sup>2</sup> of England and the Plunkets of Ireland, came originally from Denmark" (II, 326.) Dr. Copinger himself, in his painstaking *History of the Copingers*, similarly asserts that

The family of Copinger or Coppinger is of great antiquity in the County of Cork, in Ireland . . . . The Copingers originally came from Denmark and settled, probably as early as the tenth century, in the County of Cork.

This is an interesting illustration of that curious belief which lies, as my readers have seen, at the root of so many delusions, namely that families had hereditary surnames in the tenth century as in later times. Dr. Copinger, for instance, writes that

There have been two main divisions of the family (*sic*) of Copinger, one Irish the other English—the one connected with the County of Cork the other with the counties of Suffolk and Kent. That these are from the same stock is evidenced by their bearing the same arms. No connection can be traced between the two divisions, and it is impossible to say whether the Suffolk Copingers came from Ireland, or the Irish Copingers from Suffolk, or whether both came from Denmark direct, but it is

<sup>1</sup> In the 1894 edition it was less definitely asserted that "the Irish Coppingers claim (*sic*) descent from one of those hardy Northmen who, in the 9th century, invaded the South of Ireland."

<sup>2</sup> See p. 85 above.

clear that the family originally came from the last mentioned place.

But *why* it is clear, unfortunately, we are not told.

In his "Introduction" to the Suffolk Copingers, the learned author states that

A branch of the Danish family of Copinger, already treated of, was settled in Suffolk at a very early date. They probably appeared there in the time of King Alfred, having come over in the Danish fleet in 860, headed by Inguar and Hubba.

Need I repeat that there cannot have been a "family of Copinger," Danish or otherwise, in the 9th century? Dr. Copinger, evidently, even thinks it possible that the arms which prove the common origin of the English and Irish "branches" may have been borne by the "family" at that remote date.<sup>1</sup> What they really prove, of course, is that one family must have taken the arms of the other, as is so often done, on the supposition that a common surname implied a common origin. One does not know if that surname is believed to be "Danish," but Dr. Copinger tells us at the outset that "the original form of the name was Copener or Copyner." We have only to turn to our "Bardsley" to learn that "Copener" meant "the lover or sweetheart," while the *New English Dictionary* is cruel enough to prove that it really meant a "paramour."

I suggested above (p. 4) that the 'Saxon' claim, in the case of our oldest families, was perhaps due

<sup>1</sup> For, otherwise, they could not have descended to the two "branches," if, as he considers possible, they came from Denmark separately.

to a guess that, as their tenure of their estates had been immemorial, it was doubtless older than the Conquest. But I strongly suspect that in certain cases the idea has another origin. Incredible though it may seem to persons of ordinary intelligence, the strange confusion of thought that prevails on these subjects<sup>1</sup> has evidently gone so far as to cause, in some instances, an impression that, because a place-name is "of Saxon origin" (as our place-names mainly are), the family which derived its surname from possession of or connexion with a place with such a name must be of "Saxon origin" too, if not indeed as old as the place-name itself! A moment's thought, of course, will show that if, after the Conquest, a foreign knight obtained possession of an English manor, with a 'Saxon' name, he or his descendants would probably adopt that name as a surname, without thereby becoming "of Saxon origin."

And yet that this confusion does actually exist is proved by the amazing passage with which the Biddulph pedigree still begins in 'Burke's Peerage.'

The Saxon words '*Bidde*' or '*Bida*', prayer, entreaty etc., and '*ulph*'—assistance, protection etc., of which the surname of *Biddulph* is composed, would indicate that its first possessor had been employed in some embassy or mission to entreat assistance, and thence obtained the appellation.

Now the pedigree is traced from the Biddulphs of Biddulph—one of the oldest families in England,<sup>2</sup>

<sup>1</sup> See, p. 2 above.

<sup>2</sup> General Wrottesley tells me that there is no reason to doubt their descent from a younger son of Orm of Darlaston (co. Staffs) *temp.* Henry I. But Eyton was, of course, in error in making Orm a son of Richard 'forestarius.'

—who, I need scarcely say, obtained their “ appellation ” simply from the fact that they held Biddulph, co. Staffs. The same idea seems to animate the ‘ Burke ’ etymology of Swettenham<sup>1</sup> or of Sibthorp, of which latter surname we read that

The name of Sibthorp,... is pure Saxon,<sup>2</sup> *sib* signifying peaceful or quiet, and *thorp* a village.

The surname of course, is merely derived from the far older place-name the origin of which is wholly irrelevant. Again, the ‘ Landed Gentry ’ pedigree of the modern family of Sandbach begins with the statement that

the name of Sandbach belongs to a town in co. Chester which was founded in Saxon times.

What has this to do with the family pedigree or with the antiquity of its surname ? The climax perhaps is reached in ‘ Burke’s Peerage ’ under ‘ Tichborne ’ where one used to read :

This very ancient family, which was of importance in the county of Hants before the Norman Conquest, derives its surname from the river Itchen, at the head of which it had possessions and thence was denominated De Itchen—borne, a name which time has reduced to Tichborne.

Later learning is represented by the amazing addition :

but this derivation is objected to, and another suggested viz. Tich and Borne. (!)

<sup>1</sup> See p. 92 above.

<sup>2</sup> This is precisely what it is not. Thorp is a termination distinctive of the Scandinavian districts.

Could anything be crazier than this? 'Little Tich' we know as a name borne by a music-hall comedian, but what meaning is attached to the above phrases by 'Burke' it is difficult to say. The family was named 'De Tichborne' simply because it held Tichborne. That is how it obtained its surname, which is not a question of etymology at all.

One must once more insist upon the fact that surnames were adopted from place-names, which were of far older origin, and not *vice versa*.<sup>1</sup>

The Tichbornes, who are beyond question among our oldest houses, had a pedigree constructed for them, it seems, in the 17th century, which carried back their descent to Roger de Tichborne, by whom Tichborne was held in 1166: it is certain, however, that his father, Walter de Tichborne, a man by no means of 'Saxon' name, was its holder in 1135. Beyond that all is blank. But Mr. Oswald Barron, in his brilliant sketch of the Tichbornes' history,<sup>2</sup> has quoted from the *British Archæological Journal* the absolutely amazing statements of a learned and well-known Hampshire antiquary, Mr. F.J. Baigent.

Research is outstripped at the start—"The family of Tichborne are well known to be of Saxon descent, and date their possession of the manor of Tichborne two hundred years before the Conquest."

The reader must turn to Mr. Barron's sketch to learn further details of how the silence of records

<sup>1</sup> This essential proposition is not affected by the cases, in which, *after the introduction of surnames*, families or individuals gave their names, as owners or occupiers, to manors, farms, houses, etc.

<sup>2</sup> *The Ancestor*, No. 2, p. 114.



is accounted for till "the first of the Plantagenets ascended the throne," when, according to Mr. Baigent, "the chroniclers tell of a gallant crusader, whose name and prowess were known far and wide, Sir Roger de Tycheburne, who oft had waved the standard of the cross high above the infidel Moslems," etc. etc. This is dangerously suggestive of his poaching on Sir Mychell de Carington's province.<sup>1</sup> But, as in the case of that rival patriarch, "the chroniclers" who tell of his deeds have not yet been discovered.

The whole business is a startling instance of the lengths to which a really learned man may be carried by enthusiasm for a local house, a family of his own faith. Mr. Barron has acutely traced the legend of Saxon origin as far back as the death, for treason, in 1586, of Master Chidiok Tichborne, who protested in "a speech of wailing regret" that he was "descended from a house, from two hundred years before the Conquest, never stained till this my misfortune." That the tale of its pre-Conquest tenure should thus appear in the days of Elizabeth is precisely what one would expect. Was it not also under her that a local poet in Lancashire flattered the Traffords by alluding to their stock "before the Conquest was." These beliefs, as I observed above, would almost naturally arise when men began to covet a pre-Conquest tenure.

One cannot assert that the same confusion of a place-name with a surname is responsible for the 'Saxon' origin of the Lancashire Radcliffes, but

<sup>1</sup> See below.

when 'Burke' speaks of "the family of Radcliffe, one of decidedly Saxon origin," which took its name from Radcliffe, one is led to wonder whether the fact that the place-name is "of Saxon origin" explains this confident statement. For no attempt is made to carry the pedigree back beyond William de Radcliffe "sheriff of Lancashire, 1194" (which he most certainly was not),<sup>1</sup> alleged to be grandfather of Richard de Radcliffe, to whom Edward I granted a charter in 1303-4. As a matter of fact there is just a possibility that the pedigree might be carried two generations further back to a man of native stock; but this, clearly, was unknown to those who began it with William.

Perhaps the most extraordinary claim to a pedigree of eleven hundred years is that which is made for the Boothbys. For it is fully recognised that the first baronet, a supporter of Charles I, was the son of a London woollen merchant and the son-in-law of a lord mayor, and that his ancestry cannot be traced further back than the days of Edward VI. Yet I draw from that unflinching spring, the 'Social and Personal' column, this unhesitating paragraph:—

Sir Brook Boothby ... comes of a family whose records go back in a fairly unbroken line to something like three hundred years before the Norman Conquest. When Egbert divided England into counties in 800, the Danish Boothbys had been so long settled in Lincolnshire that a town had been called by their name.<sup>2</sup>

<sup>1</sup> He only appears in that year as paying a small fine for pardon and the king's favour.

<sup>2</sup> *Evening Standard and St. James Gazette*, 13 June 1905. In the same column we have read (19 Nov. 1908) that "the family is of Danish origin, and its members are traditionally of unusually high stature." The story quoted above is also unusually tall.

Now what are the facts? Camden is responsible for the silly statement that "the hundred or wapentake of Boothby, Boothby-Pagnell, a market town, and a gentleman's old seat called Boothby were denominated from one Boothby who there inhabited." Thereupon it is argued that, as hundreds or wapentakes were created by Egbert, according to Dugdale, in the year 800, the Boothbys had already, at that date, an established position in the county. Need one say that no such person as "one Boothby" could have then existed or that, if he had, neither town, wapentake, or hundred would have been called after him?

In an early edition of 'Burke's Peerage' the pedigree begins, quite modestly, as follows:

This family, whose pedigree can be traced to the reign of Edward VI, obtained its baronetcy in the person of HENRY BOOTHBY, Esq.....

But we now read, in the same work:

The Boothbys claim Saxon origin, and the assumption is sustained by Dugdale and Camden. The former very learned antiquary (*Origines Juridicales*, c. IX) fixes the division of counties in the year 800 by EGBERT; and the latter, speaking of Lincolnshire, says etc., etc.

To say that Dugdale sustains the Saxon origin of the Boothbys is most disingenuous: he has absolutely nothing about them. His statement that England was divided into hundreds in the year 800 has no more to do with the Boothbys than would have a statement that the Norman Conquest took place in the year 1066.

Before proceeding to deal with that group of

' Saxon ' houses whose claims are based on surnames formed from ' Saxon ' Christian names, we may glance at some ' Burke ' etymology of another kind.

Of the Pennyman family (now represented in the female line by the Worsleys) we read that

The Pennymans claim Saxon extraction. The name was originally written PENNA-MAN, signifying the chief head man, and the family was first settled in Kent.

' Headman ' might be a name of purely English origin ; but ' Pen, ' unfortunately, means ' head, ' not in English, but in Welsh ! The invaluable ' Bardsley ' gives us a very different derivation viz ; (1) " the servant of Penny " or (2) " a miser, a niggardly man." Again, we learn of the Welds of Lulworth that

Several genealogical writers, including Guillim, bear testimony to the Saxon origin of this ancient family, which tradition has handed down time out of mind.

But the only authority that is vouchsafed is a statement in Guillim's *Display of Heraldry* that the Welds " are lineally descended from Edric Sylvaticus, *alias* Wild, a Saxon of great renown in the reigns of King Harold and William the Conqueror," etc.<sup>1</sup> Etymologically, I would suggest, Jonathan Wild had a better claim to descent from the famous outlaw ; genealogically, the Welds produce no ancestor more remote than " William Weld, sheriff of London 25 Edward III." And his name is fatal to their claim. For he was sheriff in 28

<sup>1</sup> An actual pedigree, so far as Christian names are concerned, from Edric is given in " Burke's Colonial Gentry " (II, 651), but, as it makes the sheriff only seventh in descent from him, his period would be that of the third Henry, not (as it was) of the third Edward.

(*not* 25) Edward III as " William *de* Welde, draper"<sup>1</sup> and is duly found in the City records, sometimes as "*de* Welde," sometimes as "*Atte* Welde," which disposes once for all of the venerable " tradition," and proves his name to have been local.<sup>2</sup>

Two more examples may here perhaps be dealt with. The pedigree of the Wilmot baronets of Chaddesden had this paragraph at its head—

The name of Wylimot, or Wilmot, is very ancient in England. Speed mentions Wilmot, a nobleman of Sussex, in the reign of King Ethelred. This family (as we find by deeds in their possession, some of which were made before the custom of dating those instruments began, and others bearing date 1382) was settled antecedently to the Conquest, in Nottinghamshire ; from whence it removed into the County of Derby in 1539.<sup>3</sup>

The words within the brackets are now prudently omitted, and no evidence is given for this amazing antiquity beyond the name of the family. Now Wilmot, which is borne, as a surname, by several distinct families, represents merely a diminutive of the Christian name William, the name of the Conqueror himself. There is no surname of which we can more confidently assert that it is *not* of " Saxon " origin. The other example, Gilbert, is similarly a surname founded on a Christian name which the Normans introduced into England. Like other surnames so formed it is that of uncon-

<sup>1</sup> He was an alderman and died in 1372. His shop was in St. Margaret's Lothbury. His widow (unknown to the *Landed Gentry*) was the daughter of a rich mercer, a Norfolk man.

<sup>2</sup> ' Weld ' was a place-name then in Essex, Herts, and Hants.

<sup>3</sup> No attempt is made in Burke to carry back the actual pedigree beyond the 16th century.

nected families ; but, under 'Gilbert, of the Priory' we read in 'The Landed Gentry' that

Westcott observes that Gilbert, the ancestor of the present family, "possessed lands in Manadon in Edward the Confessor's days."

As Westcott can only have learned this from Domesday Book, we naturally refer to that record, only to learn that the tenant at Manadon was *not* "Gilbert", but "Colbert" !

We may now appropriately pass to that group of family names which has been already discussed on pp. 6-14, surnames derived from Christian names which were in use not only before the Conquest, but for some time after it.

At the head of these, perhaps, we ought to place Dering. "The story of the Dering myth" was broken off above (p. 55), because it seemed more properly to belong to the group we here deal with. Mr. Freeman observed how difficult it was for a man, whose surname was identical with some distinctively 'Saxon' Christian name, not to claim the bearers of the latter as members of his house. But if this temptation was general, the Derings were specially exposed to it, for their own uncommon surname is found as a Christian name in the Domesday Survey of Kent itself, where we read of "Dering son of Sired" (*Derinc filius Sired*) and of "Dering,"<sup>1</sup> just as, nearly a century later, we meet with a "William son of Dering" (*Willelmus filius Deringi*).<sup>2</sup> In both cases we obviously have, not a surname, but a Christian name.

<sup>1</sup> *Domesday* I, 1 b. The Survey also records a 'Derinc' in Surrey and a 'Dering' in Suffolk.

<sup>2</sup> *Pipe Roll* 26 Hen. II, p. 8.

But the really irresistible man to claim as the ancestor of the house was 'DIERING MILES,' who, according to 'Burke,' in 880 witnessed a grant of "King Etheluff" (*sic*). It is this ancestor of whom a "treasured record" exists, in the popular imagination, among the muniments at Surrenden Dering. The skeleton, or rather the hint of a pedigree having been thus provided, steps, as we have seen, were taken to supply the connecting links, through Sired and Dering his son.<sup>1</sup>

And the pedigree thus concocted was, further, duly adorned with appropriate family achievements.

The author appears to have then apostrophized the remote ancestor: 'Oh Diering, wherefore art thou Diering?' And etymology supplied the answer. "Dering" says Playfair, "is a Saxon word, and signifies terror,"<sup>2</sup> and 'Burke' is of the same opinion. It is pleasant to have had a remote ancestor who was christened with an eye to the 'terror' he would inspire. But it is even nicer to have Kings for one's forefathers; and it is also a prudent thing to have two strings to one's bow. So Playfair, somewhat inconsequently, proceeds:

He is said to have been descended, in a direct line, from Ethelward, King of Diera; whose father, Oswald, was slain by Penda, the Mercian, in 642; and Ethelward, being then an infant, not four years old, was deprived of his kingdom by Osway, his bastard uncle, and forced to fly into Kent, where his posterity were called the Dierans [!], as coming from that country.

Further than this, obviously, etymology could not go.

<sup>1</sup> see p. 53 above.

<sup>2</sup> *Baronetage*, I, 218.

Now when was this wondrous pedigree concocted, and by whom? There is not a trace of it in the heralds' visitation of 1619, when Sir Anthony Dering entered a simple and straightforward pedigree beginning with the father of that John Dering who married the heiress of Surrenden (now Surrenden Dering.)<sup>1</sup> The actual pedigree in 'Burke' now begins with this John Dering himself; for which there is a good reason. It was formerly 'stated' by 'Burke' (as by Playfair) that this John's father was "Sir Richard Dering knt., of Heyton, lieutenant of Dover Castle in the reign of King Richard II." But the heralds' visitation gives him a very different father, viz: "Thomas Dering de Dengmarsh juxta Lid in marisco de Romeney." And John's son, we know from his will (1480), did hold lands "in Lyd and Romeney mersh" and in "Dengemersh." In the reign of Henry VII there seem to have been Derings scattered about East Kent. At Minster, in the Isle of Sheppey, they were husbandmen or yeomen, buried in the churchyard and bequeathing cows; at Lyminge<sup>2</sup> and Stowting also, to the north of Hythe, they were buried in the churchyard; but at Pluckley (in which is Surrenden) they were gentlemen and buried in the church.

The wills, however, of the Surrenden Derings do not begin, it seems, till 1480,<sup>3</sup> and the testators, it

<sup>1</sup> This pedigree is printed in *Archæologia Cantiana*, X, 327-8 with the somewhat significant note that "This pedigree is taken from the original Visitation in the College of Arms. It was entirely omitted from the Surrenden copy."

<sup>2</sup> John Dering, born at Lyminge, was admitted to the freedom of Romney, with John his son, 26 May 1464.

<sup>3</sup> *Archæologia Cantiana*, X, 343.



is worth observing, style themselves at first "gentilman." It is not till we come to the will (1546) of Richard Dering, who had been Lieutenant of Dover Castle, that the style "Esquire" appears. And this curiously agrees with the heralds' visitation pedigree, which first allows that style to his father.

This being so, one asks again :—who concocted the great pedigree ?

Surely it was Sir Anthony's son, Sir Edward Dering, the first baronet. That interesting character and ardent antiquary, whose "uberrimam omnigenæ eruditionis copiam" is praised by his son on the family monument, is known to have collected books, charters, and manuscripts to illustrate the history of his own and other families, thus founding a famous library, among the treasures of which was the 'Dering' Roll of Arms. General Wrottesley writes in his monograph on *The Giffards* :

The following notes on the Dering Roll were given to me by the late Mr. Stephen Tucker, Somerset Herald, in 1881 ;—"This Roll, which the Heralds of the time of James I erroneously associated with the Acre Campaign, is that known as the Dering Roll from its having been formerly in the possession of the Dering family, some member of which is more than suspected of having tampered with it, for the foolish, but fortunately obvious, vanity and purpose of introducing fictitious shields of his Dering, De Criol, and Pluckley ancestors" (p. 203.)

The 'member' in question was clearly Sir Edward, and his mischievous intervention makes it difficult to determine the origin of the Dering arms.

His claim was that his family, originally 'De Morinis,' bore, as such, "or, a saltire sable"<sup>1</sup> and that, some time after the marriage with the daughter and heir of "Norman Fitz Dering," sheriff of Kent *temp.* Stephen, they adopted the arms, with the name, of Dering, viz: "argent, a fess azure, 3 torteaux (or roundles) gules," the torteaux being an augmentation of honour for the loyalty and bravery of the above Norman, who was "found after the battle" of Lincoln (1141) "with his shield covered with blood"!<sup>2</sup> This delightful anachronism is duly accepted by "Burke," which still gravely records the torteaux as an "augmentation."

This coat with the fess and torteaux appears to be at least a genuine one, for it is found on an early seal, of which there is a cast in the British Museum (D.C., D. 232), with the legend [SIGI]LL: RIC[ARD]I: FIL[II]: DERINGI: DE HAUT, and Willement states<sup>3</sup> that he possessed a deed of 19 Hen. III (1234-5) with an impression of it. It is also alleged to have occurred on the seal of a receipt from Sir Richard Dering, at Hayton,<sup>4</sup> in 22 Ric. II (Dec. 1398),<sup>5</sup> in Sir Edward Dering's possession. He alleged that this Sir Richard was father of the John Dering who married the Surrenden heiress, while the Visitation pedigree, we have seen, assigns him quite a different father.

<sup>1</sup> Mr. Oswald Barron F.S.A., from whom we hope for a definitive edition of the Rolls of Arms, has been good enough to inform me that the saltire gules of the Roll has been altered to a saltire sable, and the name of Richard Dering substituted on an erasure for the actual name on the Roll.

<sup>2</sup> Playfair.

<sup>3</sup> in his book on Canterbury Cathedral.

<sup>4</sup> Now a farm in Stanford, N.W. of Hythe.

<sup>5</sup> Stowe MS. 665.

The descent of the arms, therefore, seems to be "not proven." It is noteworthy that "In the original visitation (C. 16, fo. 51) in the College of Arms the Dering coat is not given."<sup>1</sup>

Mr. Barron, on whose acute judgment in these matters we may rely, has brought to my notice another matter affecting the Dering pedigree and the too ingenious baronet. He informs me that in his opinion some of the Dering brasses placed in Pluckley church are subject to grave suspicion. Indeed he goes so far as to hold that four of these are spurious, and possibly the shield of arms on a fifth also. The earliest is that of John Dering (d. 1425) who married the heiress of Surrenden, which has a shield with the saltire—as the Dering coat—and shows a horse beneath the squire's feet and the crest of a horse upon his helm.

Sir Edward, however, was flying at higher game than this. Some years after the visitation, namely between 1627 and 1633, he induced Segar, Garter King of Arms, to "confirm" to him the whole bag of tricks, with the black saltire of 'De Morinis' on its golden field in the 2nd and 3rd quarters, and black horses with golden manes prancing about his quartered shield as supporters and as crest.<sup>2</sup> And, best of all, Sir Edward secured a 'Saxon' motto:—"dering ondrædath ne dering."<sup>3</sup> Mr. W.H. Stevenson, as an expert on the subject, has been good enough to inform me, in reply to an enquiry, that—

<sup>1</sup> *Arch. Cant.* X, 327 note.

<sup>2</sup> *Ibid* p. 329:—"Le Neve's Barts. Vol. 2, p. 48" "See the confirmation of Supporters, Crest, and Arms to Sr. Edward Dering Kt. & Baronet by Sr. Will. Segar. Kt. Garter principall King of Arms in a MS. belonging to me, Peter Le Neve, Norroy," etc. etc.

<sup>3</sup> This was in 'Saxon' characters.

" The Anglo-Saxon motto is impossible nonsense. *Derung*, the nearest word, means ' injury ' (abstract), and the negative should precede the verb in Anglo-Saxon."

This ' Saxon ' house has now substituted another motto in its ancestral tongue, namely "*Semni ne Semni*," which, it is explained, means " I can do nothing without God's help." On this Mr. Stevenson comments: " How *semni* can mean, ' I can do nothing ' and ' God's help ' in any conceivable language except Chinese is beyond me. "

The same obliging Garter King of Arms, who confirmed to Sir Edward these " gay things," officially certified about the same time (1632), as based upon record evidence, a pedigree of the Weston family deduced from " Haylerick de Weston Saxonicus." <sup>1</sup> And in modern times, with even greater generosity, the heralds have recorded for Dering a coat of 60 quarterings—one of those heraldic monstrosities which delight Mr. Fox-Davies <sup>2</sup>—among which they have thrown in yet a third coat for Dering, to say nothing of a fancy coat for that Flemish freebooter, William d'Ypres, whom Stephen created Earl of Kent. <sup>3</sup>

Of the great collection of Anglo-Saxon and other charters transcribed by Sir Edward and by his amanuensis, Oliver Marshall, some idea may be formed from those which were in the Ashburnham collection. <sup>4</sup> But what we have specially to consider is his transcript of the ' *Textus Roffensis* '

<sup>1</sup> See my *Studies in Peerage and Family History*, p. 308.

<sup>2</sup> *Ibid.* p. xii.

<sup>3</sup> It is figured in *Arch. Cant.* X, 330 as " a true copy of the shield of quarterings of Dering as entered in ' Norfolk ' VII, 157, in the College of Arms, London. George Harrison, *Windsor Herald*" (1849-1880).

<sup>4</sup> *Historical MSS. Report* VIII, App. 3, pp 27, etc.

(from which Hearne printed his text) ; for it was there he found that " Diering miles " from which sprang the whole story. We may then safely say that he was its " onlie begetter."

If a name so uncommon as Dering was almost bound to lead to a claim to ' Saxon ' descent, what could one expect in such a case as that of Ethelston? One naturally reads in the ' Landed Gentry ' that

Mr. Ethelston claims descent from the ancient Saxon family of Ethelstone, which is traced in an old manuscript, No. 2042 Harleian MSS. British Museum, called ' The Ethelestophylax,' from the time of Athelstan.

The Thorold story is less excusable. According to ' Burke's Peerage '—

This very old Lincolnshire family is of Saxon origin. Theroldus de Buckenhuld was sheriff of the co. of Lincoln in 1052, and during his shrievalty gave his manor of Spalding for a cell to the abbey of Croyland, as appears by the date of the charter in Ingulph's *History of Croyland*.

The objections to this story are that the manor of Spalding (Domesday shows) was not given to Croyland ; that " Ingulph's *History of Croyland*" is notoriously a forgery ; and that, even if the facts were as stated, ' Theroldus ' was obviously only the Christian name of the grantor, not his surname. Tuold, moreover, was more common as a Norman than as a ' Saxon ' name.

Hitherto we have at least been dealing with families of ancient standing and territorial position. But now we will close our study of this group of ' Saxon ' houses with two of comparatively recent rise, whose cases are instructive in their way. The

houses of Whatman and of Godman had certain points in common; they both began their pedigrees in the 18th century; both also—the one by “tradition,” the other by gradual development,—have been credited by the ‘Landed Gentry’ with a claim to Saxon descent. But in this they differed: Whatman remained content with a first known ancestor who was not even born till 1741, although claiming “descent by tradition”<sup>1</sup> from a race of independent Kentish yeomen of Saxon times” (!) But the family tree of Godman grew and grew, and, in spite of pruning here and there by loving and judicious hands, it reached at last the reign of Edward the Confessor.

“Tradition”—the value of which it so admirably illustrates—was for the Whatman claim a safer proof to offer than any detailed pedigree. To learn something of the Kentish Whatmans in the 17th century one turns to the *Canterbury Marriage Licences* of Mr. J.M. Cowper,<sup>2</sup> and one is there able to identify the position of six bearers of the name, viz :—three blacksmiths, a cordwainer, a shoemaker, and a tailor. How then, it may be asked, did the ‘Saxon’ tradition arise? Bardsley’s *Surnames* explains Whatman as meaning “the servant of Wat” (i. e. Walter) the ‘h’ being intrusive. But another derivation seems possible: the name “Wetman” occurs once as the name of a ‘Saxon’ holder in Domesday (under Herefordshire), while ‘Wateman’ is found later, obviously as a Christian name. In 1222, at Barling in Essex, a ‘Wateman

<sup>1</sup> The words “by tradition” have now disappeared from this sentence.

<sup>2</sup> The volumes for 1619-1676.

son of Simon' (*Wateman Filius Simonis*) is named among the lesser labourers (*minores operarii*) who toiled in the fields.<sup>1</sup> If 'Wateman' is the source of the surname 'Whatman,' it belongs to the group we are discussing; but the "independent Kentish yeomen" are, in any case, the fabric of a dream: they are merely paper ancestors.

The Godman pedigree, as it now appears in 'Burke's Landed Gentry,' is a particularly good example of that ingenious confusion by which all those who bear a not uncommon surname are treated as a single family, which eventually is made to include those who bore 'Godman' as a Christian name before surnames were formed. In 1879 the 'Landed Gentry' asserted that "This is an ancient Surrey Family," that Thomas Godman removed into Sussex in or about 1582, and that one of his descendants settled in Chichester in the 18th century. In 1894 a new "opening" is found:—

This is an ancient Surrey and Sussex family (two members of it being M.P. for Lewes in the reign of King John) etc.

How wondrous is the light that may yet be thrown on English history and institutions by the records of these ancient houses! Here we learn from a passing allusion that Lewes at least was returning members (whatever other boroughs may have done) to Parliament in the reign of John. It has hitherto been wrongly imagined that the English Parliament (or at least the representation of the Commons) was an institution of later growth. But the paragraph rushes on, at a pace fatal to gram-

<sup>1</sup> *Domesday of St. Paul's*, p. 67.

mar, and brings us once more to the 18th century with the statement that a "branch resided in and near Chichester *m. Miriam*" etc. Did the "branch" marry Miriam? And what does it all mean?

It was after this that the family tree began to develop rapidly; and the history of the house has changed. Instead of settling in Chichester in the 18th century, it now settles there at least as early as the days of Charles I. And a continuous, if jejune, pedigree is somewhat rashly vouchsafed. In the shadow of the old Cathedral spire five Richards flourish in turn; but of them the 'Landed Gentry' has not much to tell us. We consult, therefore, as for Whatman, the local marriage licences, and there find at Chichester, in the late 17th and early 18th century, two Richards in succession: the one was a carpenter, the other a knacker. Contemporary with them in the same town were a blacksmith and a tallow-chandler who bore the "ancient" name.

Again, instead of removing into Sussex from *Surrey* in the *sixteenth* century, it now removes thither from *Suffolk* and in the *twelfth*! In 'household removals,' clearly, the author of this pedigree excels. It is definitely stated in the 'Landed Gentry' (1906) that

This family descends from freemen settled in the hundreds of Bosmere, Bradmere, Claydon, Colneis, and Hartlemere in Suffolk at the time of the Domesday Survey. They removed to Lewes, Sussex, in the 12th Century.

I do not hesitate to say that this statement is, and can be, nothing but sheer invention. It



obviously rests on nothing but the blunder that every 'Godeman' in the survey was a member of a Godman family, with the addition of the further blunder by which every bearer of Godman as a surname is assumed to be a member of the same family. But, although the name Godman or Godeman is found in more than twenty Domesday entries, the Suffolk entries alone are here arbitrarily selected as providing ancestors for a family found in a distant county, which does not even claim to begin its pedigree till more than four hundred years after the Domesday survey! Moreover, one would have imagined that even polyandrous ways would not have enabled a family to descend from a number of scattered freemen living at the same time.

The removal to Sussex in the 12th century is, of course, a fiction concocted by someone to connect the Sussex bearers of the name with the imaginary Suffolk family of the time of the Domesday survey.<sup>1</sup> That nearly 140 years after the date of Domesday 'Godeman' or 'Godman' was still in use as a Christian name is manifest from such a survey as that of the Essex manor of Barling in 1222, where we meet with Godeman nephew(?) of Leofward (*nepos lefwardi*) and with Brihtnoth son of Godman among the peasants.

The importance of this last example lies in the demonstration it affords that the blunder exposed by Mr. Freeman has survived his ridicule and

<sup>1</sup> It is not even accurate to state that the 'freemen' were settled in the five Hundreds "at the time of the Domesday survey" (1086), for they are entered as settled there "in the time of King Edward" (the Confessor).

scorn, and is still adding to the number of our pre-Conquest families. It may be well, therefore, to reduce it to absurdity by quoting this delightful opening to the pedigree of Godfrey-Faussett-Osborne in the 'Landed Gentry' (1879).

The settlement in Kent of the family of Osborne (written anciently Osberne, and spelt very variously for some centuries) dates from the Saxon period. It appears from Domesday that SBERNE BIGA owned in the time of Edward the Confessor eleven messuages in Canterbury, and held etc... and that at the date of the survey, Osberne held of the bishop of Bayeux..... Osberne Paisforer, Osberne FitzLetard, and Thomas Osberne<sup>1</sup> are also mentioned as holding manors in Kent. At the same period also flourished Osbern, Monk of Canterbury..... one of the most learned and accomplished men of the day, etc.

This gem, one hastens to add, has wholly disappeared from the work, but, as a *reductio ad absurdum*, it is too good to be lost. Moreover, even now, the family pedigree opens with the statement that the family (*sic*) of Godfrey

"is of great antiquity in Kent. Domesday records that Godfrey held manors in Petham and West Farleigh, and that Godfrey (called Dapifer) a knight of the Archbishop, held of him etc."

Here the Christian name of Godfrey is inexplicably mistaken, like that of Osbern, for a family surname. Both these Christian names are fairly common among the Normans in Domesday.

At this point we may at last take leave, not only of those 'Saxon Houses' whose claims are

<sup>1</sup> This name, of course, does not (and could not) occur as alleged.

based on a surname identical with a Christian name of 'Anglo-Saxon' origin, but of all those other families in the 'Peerage' and 'Landed Gentry' who claim to be older than the Conquest. But I have reserved for treatment here the Wolseleys of Wolseley and the Lumleys of Lumley, because, in spite of the absurd 'legend' which still heads the "lineage" of the former, the actual pedigree now propounded does not even, we shall see, carry the Wolseleys to the Conquest. Nor does that of the Lumleys earls of Scarborough, ancient though their descent undoubtedly is.

As 'Burke' still insists on the above absurd legend, in spite of my own exposure of it, one must repeat that exposure.

There still remain in England a few families and Wolseley of Wolseley is one, that can prove by authentic evidence an unbroken descent from Saxon times, and show the inheritance of the same lands from a period long anterior to the Norman Conquest. A legend in the family narrates that their ancestor was given the lands of Wlselei (now Wolseley) for destroying wolves in Co. Stafford in the reign of King Edgar when wolves were finally destroyed in England.<sup>8</sup>

I can but reproduce my comments on this silly story, which 'Burke's Peerage' makes itself only ridiculous by repeating.

And so the "authentic evidence" consists of "a legend in the family", itself dependent on another legend, namely that wolves were "finally destroyed" in England under Edgar, whereas I have seen them alluded to as in existence

<sup>8</sup> Burke's *Peerage and Baronetage*.

in twelfth century charters, while they were not extirpated, of course, till an even later date.<sup>1</sup>

The 'legend' doubtless arose from conjectures on the place-name Wolseley, which is simply Wulfsige's<sup>2</sup> 'lie' and has nothing whatever to do with wolves. That the present family *cannot* "show the inheritance" of Wolseley from a period earlier than the Conquest is certain, for, as I explained:—

Wolseley (in Colwich), as a matter of fact, was held at the time of Domesday (1086) by the bishop of Chester, whose undertenant was a certain Nigel, unknown to the Wolseley pedigree.

However, as if to bolster up the claim in the opening paragraph, 'Burke' now adds the statement that

A pedigree compiled by Sir Richard St. George Clarendieux *temp.* James I, and carried down to 1692 by Peers Mauduit, Windsor Herald, traces the family from SIWARDUS, Lord of Wlselei, co. Stafford, who is shown by a deed sans date to have been father of WILLIAM DE Wlselei, etc. etc.<sup>3</sup>

Although this pedigree is destitute of early dates, we find that "Robert de Wlselei", fourth in descent from this William, is entered as "living A.D. 1281". If we allow for each generation twenty-five years, this would give us William as

<sup>1</sup> *Studies in Peerage and Family History* p. 65. Wolves were still harrying the deer in Macclesfield Park as late as 1302-3, as is proved by record evidence.

<sup>2</sup> Wulfsige was a common Christian name in A-S times. Lord Wolseley's wolf supporters and crest, with the motto "Homo homini lupus," appear to be derived from the legend, but may be only "canting" on the name.

<sup>3</sup> This pedigree had previously appeared in Playfair's *Baronetage*.

living in 1181, and it is a remarkable fact that on the Pipe Roll of 1180 (p. 12) we find a "Willelmus de Wulfsieslega" entered under Staffordshire. This would make the pedigree begin with Siward about the middle of the 12th century, which, as I have repeatedly explained, is as far back as our oldest families can usually hope to go.

The Lumleys' case is exceptional. Mr. Freeman specially refrained from expressing an opinion on their pedigree, giving as his reason that their district was not covered by Domesday and that those who had a right to be heard on the subject considered that it might be possible to trace them beyond the Conquest. The family, however, are content to begin their pedigree in 'Burke' with Liulf the thegn, who was slain in 1080, though he is made to marry a granddaughter of King Æthelred, who died in 1016. So far as the 'Burke' pedigree is concerned, the genealogist would only object that the 1st Lord Lumley, who died in 1400, is shown as 8th in descent from the above Liulf, who died in 1080. Even with the excessive allowance of thirty years for each generation, 320 years would almost require eleven generations; and on that ground the pedigree, as it stands, may be fairly subject to some criticism.

There is one family for which is claimed a pedigree older than the Conquest, of which I have not yet spoken, because I am not yet sure that it is reckoned a 'Saxon' house. These are the famous Yorkshire Scropes, perhaps the only race of untitled commoners whose ancient greatness has been grasped by the writer of newspaper

paragraphs.<sup>1</sup> The 'Scrope and Grosvenor' controversy, the claim to the earldom of Wiltes, and Shakespeare's pen have all contributed to their fame. But when it is asserted, as in the 'Landed Gentry' and in the newspapers which copy therefrom, that they have a clear descent from Richard the son of Scrop and Osbern, his son, of the Welsh March, in the Confessor's days, the genealogist must reluctantly insist that no such pedigree has been made out, and that the Yorkshire house begins its history no earlier, at most, than the 12th century.<sup>2</sup>

We have now examined, I believe, practically all the houses in 'Burke's Peerage' and 'Landed Gentry' which claim 'Saxon' origin, in the sense of possessing a pedigree which begins before the Conquest. And we have found their claims fail, one after another. Is there then no house which can justly make that claim? There is at least one, which still ranks among our great territorial houses, although, as Mr. Freeman pointed out, the claim, oddly enough, is not made for it by 'Burke'. This is the historic house of Berkeley, which, although it did not obtain the lands of Berkeley till the 12th century, is now admitted by genealogists to have a clear descent from Eadnoth, who held the office of 'Staller' under Edward the Confessor.

<sup>1</sup> The *Daily Mail* of June 19, 1909 devotes a whole column to "A great English family : the Scropes of Danby."

<sup>2</sup> The best account of their origin will be found in Mr. A.S. Ellis' notes on 'Scrope of Flotmanby' in *Trans. East Riding Ant. Soc.* Vol. XI (1903), which may be supplemented by two charters at Belvoir Castle, dealt with by me in *Hist. MSS. Reports : Duke of Rutland's MSS.*, IV, 82-3.

And there was till recently, still figuring in the pages of the 'Landed Gentry,' one which, if its pedigree is proved, could claim the same antiquity. The Ardens of Longcroft claimed to be cadets of a house enjoying a distinction perhaps unique. For it had not only a clear descent from Ælfwine, sheriff of Warwickshire in days before the Conquest, but even held, of the great possessions of which Domesday shows us its ancestor as lord, some manors which had been his before the Normans landed, at least as late as the days of Queen Elizabeth. Here then we have a real instance of what is so freely alleged without any evidence to prove it, the tenure of lands by the same family before and after the Conquest. That such a case was quite abnormal was recognised, of course, by Mr. Freeman, who considered that their ancestor had in some way contrived to obtain the favour of William.<sup>1</sup> The fact, however, I repeat, is proved, and the true genealogist welcomes its proof in the case of an English house, sprung from the heart of England, with a name that reminds us of the woodland and the deer.

There are probably extant descendants in the male line of the Gloucestershire Tracys of Todington, a house which, through the lords of Sudeley, could claim an illustrious ancestor in Ralph, Earl of Hereford under Edward the Confessor. But Ralph, as his name proclaims, was not of English stock; he was the son of a French count.<sup>2</sup> There is no question, therefore,

<sup>1</sup> Mr. Freeman does not mention the descent of the Ardens, as he deals only with the Conquest period.

<sup>2</sup> See my *Studies in Peerage and Family History*, p. 149.

in this case, of a ' Saxon ' house.

But when we seek for families who can prove their native origin, although their pedigrees cannot be traced so far back as the Norman Conquest, a fair number, as will have been gathered, can undoubtedly be found. Such are Nevill, Lumley, Fitzwilliam, Stanley (as we have seen) and, among the Commoners, pre-eminently, Okeover of Okeover.<sup>1</sup>

The people of this country have, at various periods of their existence, assimilated, with advantage on the whole, immigrants of their own race. Before the Conquest they owed much to the infusion of a virile stock from Scandinavian lands ; at the Conquest itself a stern lesson, followed by a time of much suffering, had a tonic and bracing effect on a peace-besotted democracy<sup>2</sup>, and, *pace* Mr. Freeman, in many ways brought us an ultimate gain. In the succeeding century the people, we know, were already becoming one, and, as has been seen above, it is no easy matter to determine to which race belonged a house which had then its rise.

With the subsequent development of surnames there arose a test of immigration. When the surname was hereditary and fixed, it became possible to tell with a fair approach to accuracy, by the name which a man bore, the country from which he or his forefather had come. Of this we have a good example in the great immigrations, from Flanders and from France respectively, of Protestant

<sup>1</sup> Their family history has been written by General Wrottesley.

<sup>2</sup> I would venture to refer the reader here to what I wrote in *Feudal England* (1895), pp. 394-8, which (though reprobated at the time by Prof. Maitland) is now recognized as the alarming truth.



refugees in the 16th and 17th centuries. Proud, and justly proud, of their most honourable history, their descendants cherish the names that tell of their 'Huguenot' origin and remind us, through the Huguenot Society and its work, that of the stock from which they came they have no cause to be ashamed.

Norman "and Saxon and Dane are we," but we gained from the industry of the Fleming and we gained from the genius of the French. Who shall compare with their coming the alien inrush of to-day, the ousting of our people by the sweepings of the ghetto, the men of an outcast race? <sup>1</sup> There are districts already in this country where the speech is an alien and a mongrel tongue, districts in which an English-speaking man feels as a stranger in his fathers' land. They suggest that a future *colluvies gentium*, masquerading as the English folk, may have, if they speak the truth, to adapt the lines of Tennyson as—

German and Pole and Jew are we  
But all of us Jews in our welcome of thee

But our 'Saxon' houses remind us by their name that the German is a man of our own race, the speaker of a kindred tongue. It is not the sons of the German people who are now ashamed of their names: it is the offspring of an Asian race. "My people want to be let alone," said a Jew peer in the House of Lords: <sup>2</sup> one is tempted to remind Lord Swaythling that his people are really

<sup>1</sup> Of course I am not referring to the distinguished Jews derived from the South of Europe.

<sup>2</sup> *Parl. Debates*, 17 March 1908 (CXXXVI, 332.)

under no compulsion to adopt a noble English or a famous Scottish name.<sup>1</sup> Even as I write, "Henry Clifford"—the name is ancient and historic—receives a heavy sentence, and, on the fact being revealed that his real name begins with Moses and ends with-ski, is further condemned to deportation under the provisions of that wise Act which was bitterly opposed by certain persons who seem to imagine that England exists, not for the English, but for the Russian Jew. There are immigrants with whom we can dispense.<sup>2</sup>

Great, far too great, as is now the power of the purse, the government of England is not yet,—to use a familiar and a painful phrase,—“in the hands of the Jews.”<sup>3</sup> This is a thing that needs saying, and it has been bravely said. Speaking with the voice of a great Englishman, in his statesmanlike reply to Lord Swaythling, the Archbishop of Canterbury pointed out that

we must not..... be too much regulated and influenced by consideration of the wishes and scruples of those who

<sup>1</sup> It was even proposed, on one occasion, to bring this question before the Congress of Archæological Societies on the ground of the confusion it is likely to cause. To those Jews who are satisfied with their ancestral names the above remarks obviously have no reference.

<sup>2</sup> From a despatch published in the press (23 Nov, 1908) on the "Russian Grain Frauds") I make this extract :—"All those concerned in these old-standing fraudulent practices—buyers, brokers, sorters, analysts and shippers—are exclusively Jews.

Formerly there were a few Russians and Britishers engaged in the staple industry, but their best efforts were strangled by the unscrupulous Jewish coalition opposed to them."

<sup>3</sup> Need one say that this is a matter with which religious prejudice has nothing in the world to do. It is a Jewish rabbi who denounces, since the text was in print, "that money greed, that extravagance which was at the root of so much of the bad feeling levelled against the Jewish people," "the mammon worship which characterised so many of our Jewish circles" (and which is spreading from them into circles other than Jewish). "Money was the only passport." (*Standard*, 28 Dec. 1909.)

must, after all, be a very small minority of the people of the land taken generally.<sup>1</sup>

For "the first duty of a Government is towards its own people." I take the phrase from Lord Donaldson's letter on unemployment, in which he boldly claims that the first remedy is that "we must have a poll-tax of at least £10 a year on every foreigner entering the country for employment."

"If a poll-tax, such as I propose, be not imposed, all plans for helping our own working classes may be likened to a man trying to empty a well, fed at the bottom with an inexhaustible spring."<sup>2</sup>

Students of economic conditions in the East End of London know that the Jewish question is one which will have to be faced in spite of indignant protests, it may be, from potent quarters.

But, if these are rather matters for politicians and economists, there is one point at least on which all have a right to speak: the great names of England Englishmen have a right to protect. Houses, the names of which are part of the heritage of England, should not be in danger of seeing them usurped by the men of an alien race. From this profanation the great Napoleon did at least save France: nor does Germany permit it. The ancestral portraits of that stately breed, in which foreigners have sometimes seen an almost Greek beauty, may find themselves in strange company: they and the heirlooms upon which, in former days, they looked, may be destined to deck the

<sup>1</sup> *Parl. Debates*, CXXXVI, 334.

<sup>2</sup> *Standard*, 10 November, 1909.

walls and adorn the table of a Jew. But those to whom they still belong may justly ask their countrymen to save their ancient names from the danger of sharing in their fate. If a Moses or a Levi would change the name that proclaims his race, there are other than noble names which he is at liberty to adopt. In the famous words of Crewe, addressing the assembled Lords :—

I have laboured to make a covenant with myself that affection may not press upon judgment; for I suppose there is no man that hath any apprehension of gentry or nobleness but his affection stands to the continuance of, so noble a name and house;... and yet time hath his revolution, there must be a period and an end of all temporal things, *finis rerum*, an end of names and dignities, and whatsoever is terrene; and why not of De Vere? For where is Bohun? Where is Mowbray? Where is Mortimer? Nay, which is more, and most of all, where is Plantagenet? They are intombed in the urns and sepulchres of mortality.

Their names, indeed, might pass away; but Crewe was spared at least, in the days of the Cavaliers, the thought that these or other not less noble names might suffer what he and those whom he addressed would have deemed the last indignity.

To those who have studied with a seeing eye the map of this country there are names on every side alive with 'Saxon' memories, names eloquent of the English assembled in their ancient homes.<sup>1</sup> Some of them are more familiar now as the peerage styles of an Eastern race. But some there are which have escaped the flood, which are still the

<sup>1</sup> —ham,—ton,—ing, etc., etc.

homes of those who held them centuries ago, who have not yet been swamped or tainted by the new plutocracy, that grave source of coming danger, economic, political, and social. Of such ancient houses as these Algernon Sidney wrote :—

We know many that are now called commoners, who in antiquity and eminency are in no way inferior to the chief of the titular nobility..... and if the tenure of their estates be considered, they have the same fame and as antient as any of those who go under the names of duke or marquis.

Their fathers led this land through an age of storm and stress before it fell beneath the sway of a Baptist in a motor-car.

Of them one may still say, in Crewe's majestic speech, " I suppose there is no man that hath any apprehension of gentry or nobleness but his affection stands to the continuance " of these names on their ancestral lands. Nor is the spirit dead among us which led him as an Englishman to exclaim : " And yet may the name and dignity of De Vere stand so long as it pleaseth God."

# THE GREAT CARINGTON IMPOSTURE

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*Brown, Jones and Smith—The two John Smiths—Three Smith families claim to be ‘Caringtons’—The Conquest ancestor—The 16th century document—All turns on it—It is false—Sir Michael, the Standard-bearer—His mythical existence—His ‘costly’ crusade—His alleged relatives—Sir William’s mythical marriage—The Christchurch monument—His mythical children—The Roos marriage—“John Carington”—His alleged heirship—The 16th century narrative a proved imposture<sup>(1)</sup> by its language<sup>(2)</sup> by its statements—The pedigree collapses—The Carington arms—The Smith arms—The alleged change of name and arms—The Croke-Blount story—It rests on the same narrative—The Malebisse-Beckwith story—The identity of ‘John Smith’—RISE OF THE ESSEX SMITHS :—Hugh Smith—Sir John Smith—His grant of arms—Marriages with heiresses—Arms on monuments—The spurious pedigree appears—The family believed to be extinct—LORD CARRINGTON’S ANCESTRY :—Alleged descent from Essex Smiths—Mr. Augustus Smith destroys it—It is dropped—Dr Copinger substitutes another—The arms—THE SMITH-CARINGTON DESCENT :—Rise of the family—Descent from Essex Smiths claimed—Name of Carington assumed—Evidence of physiognomy—Who was Robert Smith (1699) ?—No proof of his identity—Such proof essential—The other Robert Smith—His alleged affiliation—The evidence examined—The family lawsuit—Alleged change of faith—Heralds’ College accepts the descent—Possibly in error—What proof of identity ?—The Home Office and the officers of arms—The Royal Licence—The ‘Carington’ arms—Mr Smith and the Norman dukes—The alleged Layneham descent—The ‘Redenhall’ juggle—The alleged twins—Collapse of the descent—Conclusion.*

Of all the newly rich consumed by a desire for ancestry the most to be pitied are those, surely,

who bear the name of Smith. With a Brown there is always something to be done. A delightful article in the *Daily Mail* on "Where the Browns came from"—by "Sir Charles Clifton-Browne, Bart.", whose baronetcy, strangely enough, the peerage books seem to ignore—is rich in information on the subject. We there read that :—

One often hears the name of Brown mentioned in terms of contempt and derision, and it is the general idea that persons of that name are of plebeian origin. A short account of ancient families bearing that much abused surname will prove it to be one of the oldest in the British Empire, and its very antiquity has perhaps been the cause of its universality.... hundreds of men who bear the name of Brown or Browne have as good a claim to high birth and ancient lineage as the much-boasted of Vere de Vere.

These assertions which, to say the least, do not err on the side of modesty, are supported by reference to "the battleroll of Hastings, which is still in existence" (a fact of which one was not aware) and to the fact that, as early as 1091, William Rufus took in his train, when marching against Carlisle, "an esquire named Le Brun," who thoughtfully pushed on into Scotland to provide an ancestor for "the clan Brown." One of the clansmen, we further learn, "High Sheriff of Aberdeen in 1328," had "a conformation (*sic*) of arms" with "three fleurs-de-lis or, in memory of his descent from the royal house of France"! All this must be intensely gratifying to every Scottish Brown, and yet one envies also "the premier Browns in England," of whom one is tempted to exclaim, in the spirit of Mrs. Hemans :

The Premier Browns of England,  
How beautiful they stand.

Yet the Browns' potential ancestors have not been exhausted either by the writer in the *Daily Mail* or even by the author of the *Norman People*. According to the latter, three, at least, ennobled families of Browne derive from "Turulph, a companion of Rollo" in 912. It is unaccountable that both these writers should have overlooked the fact that Hugh "le Brun" was count of Lusignan in the days of Henry II and that they should not have reminded us that Master Thomas Brown—known to his colleagues as 'Brown'<sup>1</sup>—was a mighty man, in the same reign, at the exchequer of the English King.

For Jones, again, there is hope. He may always prove to be a member of a Welsh 'royal tribe'; for, if Americans are 'mostly colonels', the Welsh nation was, in former days, mainly composed of princes. And if a junction can once be effected with the spreading royal line, he can gaily travel back to the inevitable Beli Mawr, King of Britain, to Coel Godebog and other worthies, whose arms the Heralds' College may haply enable him to quarter.<sup>2</sup> Nay, Mr. H.J.T. Wood, as the champion of Welsh pedigrees, begins his demonstration of their value by admitting that "A Welshman whose family was of any position in the sixteenth century can, as a rule, without much trouble find a pedigree thence to Adam," and ingenuously adds that "an Englishman who is unable to do the same has a

<sup>1</sup> See the section 'Quid ad Brunum' in the *Dialogus de Scaccario*.

<sup>2</sup> See my *Studies in Peerage and Family History*. p. xii.



natural tendency to regard all Welsh pedigrees with distrust, not to say contempt.”<sup>1</sup> Nor does even this exhaust the potentialities of Jones. For if, scornful of the land that bore him and of Shenkin, his far-off sire, he should crave rather for Norman blood, a Jones may blossom as a true Herbert, with a patriarch who was either a royal chamberlain, or a Count of Vermandois, or the bastard son of a crowned King, Henry, ‘Lion of Justice’ and father of a mighty brood. A Jones, therefore, may take courage.

But a Smith—! He may call himself, of course, Plantagenet-Smith, or, if greatly daring, even Smith-Plantagenet. But the ‘Smith’ remains; the ‘Smith’ haunts him; and the serious enquirer is bound to learn that he is not a Plantagenet, but is a Smith. The obliging Playfair<sup>2</sup> thought, indeed, that the name of Smith was derived from “Smeeth, a level plain.” But this was a counsel of despair. What is wanted is a Smith ancestor who will reveal the fact to his descendants that he was not really a Smith at all, and had only affected that distressing name to conceal the fact that he sprang from an ancient and a noble stock. In due course that want was supplied, and supplied, as we might expect, at the time when it would be most acutely felt and when the forger of pedigrees was at his prime—the spacious days of Queen Elizabeth.

<sup>1</sup> See his paper on “The value of Welsh pedigrees” in *Ancestor*, No 4, p. 47 *et seq.* It is not only the mere Englishman who is sceptical of these Welsh pedigrees. Dr. Gwenogvryn Evans refuses to trust them further back, at most, than three generations, and reminds us that even a trustworthy Welsh genealogist would trace pedigrees “back to ‘Adam son of God’ without any sense of the incongruous.” See also my exposure of their worth for 12th cent. genealogy and of Mr. Wood’s critical ability in *Ancestor*, No 5, pp. 47-51.

<sup>2</sup> In his *Baronetage*.

There were living in Essex, in her father's reign, two contemporary John Smiths, each of whom had a son Thomas, and each of whom became the founder of an Essex house. I partly mention them together because, in spite of this coincidence, they were admittedly unconnected, a point the bearing of which will be seen when I come to discuss the alleged identity of Smiths who happen to have borne the same Christian names. But I also do so because they both were provided at a later time with ancestors of another name *temp.* Richard II. John Smith of Saffron Walden was given as forebear Sir Roger de Clarendon, a natural son of the Black Prince, while John Smith of Cressing Temple was derived from John Carington of an ancient Cheshire house.

I cannot find that any attempt was made to connect Sir Roger with the former of the two John Smiths by supplying the intermediate generations; and, in any case, the story has long been abandoned, if ever it was seriously believed. John Smith did not receive a grant (or confirmation) of arms till 1545,<sup>1</sup> and I strongly suspect that when he did, the move was really made by his brilliant son Thomas (as in the case of Shakespeare)<sup>2</sup> who wished to inherit a coat; and this suspicion is confirmed by the fact that at this date he had

<sup>1</sup> It is not quite clear from the wording if this was the exact year.

<sup>2</sup> It is believed that the steps towards granting a coat to John Shakespeare in 1596 were really taken at the instigation of his famous son. Compare also my suggestion as to the Bertie grant in 1550 (see p. 32 above). I do not know to what extent this ingenious device for making a grantee appear to inherit his coat is sanctioned by modern heraldic practice, if indeed it is. Mr. Fox-Davies, who has made that practice his special study, could perhaps enlighten us. In 1845 Mr. Coulthart, for whom the notorious Coulthart pedigree was invented, obtained, in the name of his father, from the Lyon Office "the stolen coat of the Colts," according to the *Ancestor* (No. 4. p. 78.)

recently become Professor and Vice-Chancellor of Ely. These distinctions of the priest who already was so famed a scholar seem to be commemorated by the flaming pen in the claw of the eagle crest and the flaming altars of the strange coat in Garter Barker's grant.<sup>1</sup>

Very different was the fate of the tale that the Smiths of Cressing Temple were really Caringtons in disguise. Sir John Smith "of Cressing," it is true, had obtained, like his namesake at Saffron Walden, and like others of the 'new men' in whom Tudor days were rich, a grant of arms from Barker; for the tale was of later growth. It was not, as a rule, the founder of the house who indulged in these fantasies: he knew from what he had risen, and others knew it too. And when, in a later generation, his heirs aspired to ancestry, when a pedigree was discovered for them, the grant to their founder of a new coat was a highly inconvenient fact. The Smiths, however, were not deterred, and, as they extended their possessions, they developed a belief in the tale till the Crown itself, as it were, gave it the seal of its sanction by bestowing on Sir Charles Smith the title of Lord Carrington (1643). Yet even then they did not venture to adopt, or add to their own, the surname or arms of Carington. That crowning and monstrous development was reserved for modern times.

We are entering on an enquiry of a somewhat complicated nature, and it will be well, at the

<sup>1</sup> It is stated, especially by Morant, that this John, father of Sir Thomas Smith, was the sheriff of Essex of that name in 30 Hen. VIII, but it seems to me that it was far more probably the other John Smith, a more important man.

outset, to make it clear to the reader that we have to deal with three families who, at successive epochs, have claimed descent from a John Smith who adopted, they said, that name under Henry IV, but was really the heir-male of the Caringtons of Carington<sup>1</sup> in Cheshire.

The three distinct families were these :—

(1)

The Smiths of Rivenhall (and afterwards of Cressing, etc.), Essex, with whom the tale originated. Marriages with heiresses brought them estates in Warwickshire and Leicestershire, and one of them, Sir Charles Smith, was created Lord Carington of Wotton (Wawen, co. Warwick) in 1643. This peerage became extinct in 1706, but undoubted descendants of the family in the male line existed for some time longer.

(2)

The Smiths of Nottingham, who originally made no pretension to descend from the Essex house and who, in 1717, applied for and obtained a new and distinct grant of arms. But when Robert Smith, of this family, a London banker, was raised to the peerage in 1796, he took the title of 'Carrington' for his barony; and he further showed his desire to claim a 'Carrington' descent by directing in his will that his son and successor should take the name of Carrington in lieu of that of Smith, which was accordingly done in 1839.<sup>2</sup>

By a subsequent Royal Licence, so recently as 1880,

<sup>1</sup> I shall use the forms 'Carington' and 'Carrington' indifferently for the Cheshire family and place, as there was, of course, no distinction in early days.

<sup>2</sup> See G. E. C's *Complete Peerage*, II, 169, and my own further remarks below.

the spelling of the name was made 'Carington', doubtless as sounding more *distingué*. Finally the surname was again altered, in 1896, to 'Wynn-Carrington,' the year after an earldom of 'Carrington' had been bestowed on the family.<sup>1</sup>

Although the surname and the title alike are based, as I shall show, on a glaring imposture, the family appears to have now abandoned any pretence to a descent even from the Essex Smiths, the alleged connexion having been disproved, and even vehemently denounced, by Mr Augustus Smith, a descendant of the Nottingham house. To this subject I shall recur.

(3)

In the late Victorian period a successful business man, Mr Richard Smith by name, who appears to have been consumed by a passion for illustrious ancestry, persuaded himself, like the London banker, that he was a Carington by descent and, in 1878, proceeded to "adopt and assume the surname of 'Carington' in addition to the surname of 'Smith'," but as "his "last and principal surname." "<sup>2</sup> Devoting himself with ardour to his pedigree, Mr Smith-Carington, as he thenceforth styled himself, began the history of his family from the time of the Norman Conquest, but became unfortunately so absorbed in his ancestors the dukes of Normandy that his work assumed unmanageable proportions and was never brought to completion.

After his death (1901) the work was entrusted,

<sup>1</sup> *Ibid.* VIII, 337.

<sup>2</sup> Deed poll enrolled 26 March, 1878.

we learn, to Dr Copinger, who at length, in 1907, produced a vast volume entitled *History and Records of the Smith-Carrington Family*. All but 17 lbs. in sheer weight, this volume is accompanied by a chart pedigree, 10 ft. 8 in. by 3 ft. 9 in., requiring a separate case for its accommodation. Described in its prospectus as "one of the most remarkable genealogical investigations ever carried out" and as "of very considerable general historical importance", this "family history of great genealogical and historical interest", as the advertisement ran<sup>1</sup>,—was offered to the public at "£5. 5s. net," and it was pointed out that "the limited number of copies for sale should soon be absorbed in reference libraries." And authority was given to the work by the advertisement's statement that it was "by Walter Arthur Copinger, LL.D., F.S.A., Professor of Law in the Victoria University", whose additional distinctions the title-page records.

For the present, however, my point is that his chart pedigree brings together all the three families I have named, deriving both (1) Lord Carrington's family (through a fresh descent) and (2) that of the late Mr. Richard Smith from (3) the Smiths of Rivenhall, Essex, and tracing these last up to a John Carrington who took the name of Smith, and who was the heir-male of the Caringtons of Carington (in Cheshire), where they had been seated from the Conquest.

If then I can disprove the tale that the Rivenhall Smiths were really Caringtons, the axe is laid to the root of the tree, and there is an end, once for all,

<sup>1</sup> It occupied the whole front page of Notes and Queries, 17 August 1907.

to the 'Carington' pretensions of those families who claim descent through them. When I have clearly established this, I may go further still and deny that the two modern families have even shown proof of descent from the Essex Smiths of Tudor days.

Let us first disentangle—by no means an easy task in Dr. Copinger's pages—the two distinct parts of the old 'Carington' descent, viz :—

- (1) the 16th century fabrication (as we shall find it to be) which made the first ancestor of John Carington *alias* Smith to be Sir Michael Carington, standard-bearer to Richard I in the Holy Land.
- (2) the late Victorian addition which carried back the pedigree to a 'Hamo de Carington' in the days of William the Conqueror himself.

No one, reading Dr. Copinger's book, would imagine that these are quite distinct.

Greatly daring, Dr. Copinger asserts as to the latter of these fables—and the prospectus repeats his assertion including the italic type—that

There are not many pedigrees which can be taken back like that of Smith-Carington in the *direct male line* to the Conquest. Each descent is fully verified, over seven hundred years of the descent in an unbroken line having, as stated in 'Burke's Landed Gentry,' 1898, p. 235, been registered at the College of Arms.

This can only be described as a most audacious statement. There is heraldic authority for what I have termed the 16th century fabrication, but for the Victorian addition there is, we shall see, none.

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Indeed, we find Dr. Copinger himself, but five lines further on, admitting that—

The very early dates preceding Adam de Carington 1170 have precluded the obtaining of such direct proof as required for registration of the four successive ancestors of Adam in the College of Arms.

But this is an under-statement. Adam, the alleged father of Sir Michael, is also, on Dr. Copinger's showing, ignored by the College of Arms. For, to continue the above quotation,—

However, the continuous descent is recorded, as already stated, in the Heralds' College from the time of Sir Mychell de Carington, Standard Bearer to Richard Cœur-de-Lion, who died 1191-2 in the Holy Land.

I am informed, on enquiry at the Heralds' College, that even this assertion is incorrect and that no descent from "Sir Mychell" or any other Carington to the present family of Smith-Carington is there "registered" or "recorded."

It is, however, with the alleged pedigree "in a *direct male line* to the Conquest" that I am immediately concerned. The statement is that Mr. H.H. Smith-Carington<sup>1</sup> is "the present representative of the Carington family in the direct male line, being 23rd in descent from Hamo de Carington, t. William the Conqueror" (p. 371) and that he "is the heir male of the senior line ;<sup>2</sup> his direct ancestors continued from the time of William the Conqueror to hold the manor of Carington" etc. (p.i.) Hamo's biography is given on pp. 9-10 of Dr. Copinger's

<sup>1</sup> The son of Mr Richard Smith.

<sup>2</sup> Even if the pedigree were accepted, this assertion of heirship could not be accepted for a moment in view of the lines whose extinction would first have to be proved.



book, and we there read that Carington itself was part of Bowdon, of which Hamo de Massey was lord at the time of the Domesday Survey, and that

the lordship of the place was given by Hamo de Massey to his namesake Hamo, either a connection or follower, thenceforth known as Hamo de Carington. Hamo de Carington undoubtedly held the lordship in the latter years of the Conqueror's life. He died about 1118 and the lordship passed to his son and heir, Sir William de Carington.

Not a scrap of evidence is produced to show that this Hamo de Carington ever existed in the flesh, and I do not hesitate to say that he is a fictitious personage. I believe his name to have been evolved from that of Hamo de Massey, the real lord of Carington (in Bowdon) in 1086. And my reason for doing so is this. On pp. 357-8 of this monstrous production there is printed a pedigree of Hanbury to the marriage of the heiress with Richard Smith in 1820, intended to provide a Conquest pedigree for Mr. Smith-'Carington's' mother. This pedigree begins thus :—

Hambrusch of Hambrie, Saxon Chief (?)

1. Edward the Confessor.

↓  
Urso de Hamburie.

↓  
Guy de Hamburie.

It is not for me to explain how this frightful nonsense came to appear in a book with Dr. Copinger's name on the title page. "Hambrusch," the Saxon chief, may be left to speak for himself : my point here is that 'Urse,' who holds Hanbury in Domesday, is no mere petty lord of a rural Wor-

cestershire manor ; he is Urse d'Abetot, that Norman baron whose fief extended into four counties, and whose name was one of terror in Worcestershire to bishop, monk and layman. Yet, in order to provide an ancestor for the mother of a *nouveau riche*, the dreaded Urse d'Abetot is turned into "Urso de Hamburie," even as from Hamo de Massy, a great Cheshire baron, there is evolved Hamo de Carington as an ancestor of his father !

I now pass to the earlier fabrication, the famous pedigree produced in the 16th century, which traced the Essex Smiths, not indeed to the Conquest, but to Sir Michael Carington, standard-bearer to Richard I. Although this precious production was a homogeneous whole, it may be analysed, for the purpose of criticism, as consisting of two parts :—

- (1) the Carington pedigree, down to "John Carington,"
- (2) the story of this John's adventurous career and change of his name to Smith.

But let us first consider the source of the story, the document in which the whole of this precious production is contained. The first trace we can find of its existence is in the latter half of Elizabeth's reign, precisely the period at which these things make their appearance. It was then in the possession of the Essex Smiths, but there is, we shall find, no reason to suppose that their earlier generations had advanced the pretensions it enshrined. According to a statement by Rouge Dragon, a herald, (A.D. 1602), made in his official capa-

city, "two ancient writings" were shown by Sir John Smith (of Baddow), the most notable man that the family produced, to Cooke, Clarencieux King of Arms, who thereupon drew up "an historical Pedigree"... "agreeing verbatim" with them, 20 May, 1577.<sup>1</sup> According to Dugdale, Garter King of Arms, Dethick as Garter and Cook as Clarencieux had attested the descent from Sir Michael de Carington "from the credit of an ancient Manuscript", which belonged in their time (1586-1592) to Henry Smith of Cressing Temple, Essex,<sup>2</sup> who was of another branch. Now Henry's heirs were the Nevills of Holt, and in their charter chest, when examined in 1870 for the Historical MSS. Commission, there was found a document which was thus briefly described by Mr. Horwood in his report:—

There is a pedigree on vellum (16th century) of the Carringtons of the North. This is a very interesting document. The pedigree ends with Sir (*sic*) John Carington who died A. D. 1446 and contains a copy of his own statements to his wife Milicent; it is in old English and the phraseology and spelling show that it must have been copied from a document of the 15th century. Sir (*sic*) John was a partisan of Richard II, etc., etc.<sup>3</sup>

This description is quoted by Dr. Copinger (with the unfortunate omission of the words "16th century"), and most fortunately he has printed *verbatim* the latter part of it, containing the alleged narrative of John Carington *alias* Smith.

Fortunately also, this narrative was printed in

<sup>1</sup> Harl. MS. 1500, fos. 102-3. Compare Dr. Copinger's book, p. 152.

<sup>2</sup> *History of Warwickshire*, p. 570.

<sup>3</sup> Appendix to 2nd Report on Hist. MSS. p. 94.

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an out-of-the-way quarter by Sir Alexander Croke<sup>1</sup> from Dugdale's original transcript, of which only a modernised version is given in his *Warwickshire*. In that transcript it is headed :

This historical discourse, w<sup>th</sup>. the arms depicted in the margents of the petigree of the Caringtons of the North parts of England, is truely coppied from two other : the one in the custody of Wm. Smith, of Cressing Temple,<sup>2</sup> Com. Essex, Esq. certified under the hand of Sir. Wm. Dethick, Knt. Garter, th' other w<sup>th</sup>. Sir Chas. Smith<sup>3</sup> of Wootten and Ashbye, in the countyes of Warwick, and Leicester, knt., under the hand of Robert Cooke, Clarenceux [A. D. 1577], and Wm. Smith Rougedragon.<sup>4</sup>

As both these transcripts are verbatim, their texts can be collated, and we are now, therefore, in a position to decide the worth of the story. The case for the defence is known : the cross-examination can begin.

Let us give Dr. Copinger's own description of his document (p. 72) :—

This pedigree was copied 1st September, 1870, from a large sheet of parchment in the Charter Chest of the Nevills of Holt, by A. J. Horwood, Assistant under the Keeper of the Public Records. Its title is — "The Pedigree and Exploits in Foreign Countries of John Carington, Armiger, as related by himself to the year 1404."

The first part consists of a blazon (*sic*) of fifteen shields of arms in colours belonging to his ancestors and their alliances.

<sup>1</sup> *Thirteen Psalms... with other documents* (Percy Society), 1844, pp. 67-74.

<sup>2</sup> He held Cressing from 1612 to 1630.

<sup>3</sup> Succeeded 1629. Created Lord Carrington 1643.

<sup>4</sup> "From a copy temp. Car. I. found among the papers of Sir William Dugdale communicated in 1824 by Mr. Hamper of Birmingham." See further, for Rougedragon's pedigree (1602), p. 150 below.

Then follows a quaint pedigree commencing with "a belsire ycleped Sir Michael Carington, whome (*sic*) some-tyme was standard berer of King Richarde the first in the holley land."

The Report is very peculiar and was written by the hand of the said John Carington for the information of his wife Millicent.

It is clear the early portion was recorded from memory and tradition, for, although correct in what it states, it omits several very important facts, easily and abundantly authenticated by records still in the Public Record Office, and other unquestionable documents in various Government Departments, to which, of course, John could not appeal.

The details of the early part of the pedigree having been so fully recorded, it is sufficient to commence, with John Carrington's father (p. 72).

At this sentence I call a halt. Dr. Copinger cannot be allowed to evade his difficulty thus. He has, alas, an excellent, but quite another reason for gliding over "the early part of the pedigree." That reason is that this document "although correct in what it states," happens to state a pedigree gravely differing from that which he himself has "so fully recorded" !

I here place side by side the descent given in this document, which I take from (W. Smith) Rouge Dragon's pedigree<sup>1</sup>, and that which Dr. Copinger has recorded in his "sketch pedigree" and also in his great chart pedigree and in his text.

<sup>1</sup> Harl. MS. 1500, fos. 102-3. It was known to Dr. Copinger, for he refers to it, on p. 246, as "Pedigree Rouge Dragon, 1602."

DR. COPINGER'S PEDIGREE<sup>1</sup>

Sir Michael Carrington, Standard-Bearer  
to K. Rich. I. in the Holy Land.

William Carrington.  
Son of Sir Michael.

William Carrington

Sir William mar.  
Anne, dau. of Sir  
Edmund Farnell.

John Carrington.

Sir William Carrington  
mar. Katherin Montacute.

Sir Edmund<sup>2</sup> m.  
Katherine dau.  
and co-heir of Sir  
Thomas Heriott.

THE HERALDS' PEDIGREE<sup>1</sup>

Sir Michael Carrington. "Standard-Bearer  
to K. Rich. I. Died in y<sup>e</sup> Holy land."

..... Carrington.  
"Sonne of Sir Michael"

Sir William Carrington. "mar. Ann Dau.  
and heire to Sir Edmund Farnell."

Sir Edmund Car- rington "m. Katherin dau. & Heire to Sir Thomas Heriott."	Sir William Car- rington "m. Katherin sister to William Monta- cute Erle of Salis- bury"	Sir Thomas Carring- ton.
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<sup>2</sup> I omit the additional sons given by him as irrelevant to the comparison.

<sup>1</sup> The pedigree was also thus printed in Nichols' *Leicestershire* III, 29.

So the document records but four generations where Dr Copinger records six ; and, what is more, it arranges the individuals in quite different order.<sup>1</sup> Now this matter is vital. The author is on the horns of a dilemma from which there is no escape. Either the "early portion" of this document is "correct in what it states" (as Dr Copinger asserts), in which case his own pedigree is altogether wrong ; or, if his own pedigree is right, there is an end of the document's credit. And on this document all depends : its opening words are the only evidence for Sir Michael's very existence ; its latter portion is the only evidence for the story that a John Carrington changed his name to Smith. The entire 'Carrington' descent rests on this document ; if its link breaks, the claim of the Smiths at once crumbles into dust.

My case is that the document is forged, and that the pedigree it contains is sheer invention, false at the beginning, false in the middle, and false at the end. And this I propose to prove by overwhelming evidence.

Ostensibly, of course, Dr Copinger accepts its statements as "correct" ; nor would his readers imagine that he had to reject any of them. It is only the lucky existence of Rouge Dragon's transcript of it that enables us to discover how materially its pedigree varies from his own and that also reveals the source of the story that Sir William Carrington fought at Sluys (1340) and shortly after became blind. The story comes from the

<sup>1</sup> i. e. by making Sir Edmund an elder brother of Sir William, who "married Katherine Montacute," instead of a younger brother of his grandfather.

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spurious document and is thus given by Rouge Dragon.

This Sir Wm. Carrington served K. Edw. 3, in his warres against the Frenchmen at ye Battaill of Sluce upon the sea, an<sup>o</sup> 1340, where he was sore scalded in his face with hott water and lost one of his eies. And shortly after lost the other also, living afterwarde many yeares blind.

Dr. Copinger repeats the story thus :

Sir William de Carington, ' Chyvaler ', son and heir of John and Sibella (Rixton) was knighted by Edward III at the battle of Sluys, Flanders.....

After some ' padding ' about the battle, the author proceeds—

In this battle, Sir William was sore scalded in his face with hot water that (*sic*) he lost the use of one of his eyes. It is said that shortly afterwards he lost the use of the other eye also, but this is not at all probable in view of the actions in which he bore a prominent part up to the year 1378 (p. 34).

Quite so ; but, unfortunately, the author is discreetly silent on the source of his information. His readers, therefore, cannot know that the statement he rightly questions is derived from that spurious narrative which he has professed to accept as " correct in what it states. "

Again, according to the spurious narrative, this Sir William was *not* the " son and heir of John and Sibella (Rixton) ", but the second son of Sir William and Anne (Farnell). The author silently rejects this statement in his document, and yet leaves his readers to believe that it is quite " correct in what it states. "



I have here anticipated somewhat in order to throw light on Dr. Copinger's treatment of his all-important document. We will now return to the person with whom its narrative begins, that "bel-sire ycleped Sir Michael Carington," who was standard-bearer to Richard I in the Holy Land. With this distinguished man, the pride and joy of his house, we ought to be on sure ground. From him, according to Dr. Copinger, a continuous pedigree of the family is recorded in the Heralds' College; and, although I am assured by the highest authority that this statement is contrary to fact, he does at least head the pedigree "under the hand of Cook (*alias* Clarencieux) King of Arms" (1577), which was afterwards (1602) accepted and carried further by Rouge Dragon, as we have seen. And when (1644) that gallant soldier Sir John Smith received a state funeral in Christchurch Cathedral, Oxford, with his brother, "the lord Carington," as chief mourner, Somerset herald officially proclaimed his descent at the grave-side:—

"Thus it hath pleased Almighty God to take out of this transitory life unto his Divine mercy the valiant and most worthy gentleman, Sir John Smith Knight (descended of the antient family of Carington, from Sir Michael Carington, standard-bearer to King Richard the first in the Holy Land)".<sup>1</sup>

If "the College" disclaims any corporate responsibility in the matter, there is, I have shown, at least good heraldic testimony to the existence of Sir Michael, the standard-bearer. We cannot,

<sup>1</sup> From *The Life of Sir John Smith*, Oxford, 1644, reprinted by Dr Copinger in *History and Records of the Smith-Carington family*.

therefore, be surprised that he even figures in the pages of the *Dictionary of National Biography*, within whose jealously guarded portals—as the champion of the Heralds' College, Mr. Fox-Davies, might express it—there “cluster our national valhalla.”<sup>1</sup> In that work we read, under “Carrington, Sir Codrington,” that he “was descended from an old Norman family, one of whom, Sir Michel de Carrington, was standard bearer to Richard Cœur-de-Lion.”

Yet, in my belief, “Sir Michel de Carrington” never existed in the flesh; he is a personage as wholly mythical as that Sylvester de Grimston, standard-bearer to William the Conqueror, whom the heralds placed at the head of the Grimston of Grimston pedigree, and whose existence is recorded in the patent of creation granted to Lord Verulam's ancestor. Nay, ‘Sir Michel’ is as purely fabulous as that Hamo de Carington who, we have seen, is placed by Dr. Copinger at the head of the Smith-Carington pedigree, or that “Hambrusch,” the Saxon chief, with whom he heads the pedigree of Hanbury.<sup>2</sup>

Although unable to produce one scrap of evidence from any chronicler or record of the time, public or private, for Sir Michael Carrington's existence, Dr. Copinger is able to devote to him more than three of the great pages of his book (pp. 15-18). This feat is the more remarkable because even the spurious document tells us no more than that he

<sup>1</sup> This memorable phrase on the clustering habit of the valhallum (?) is taken from *Armorial Families* (1st Edition), p. xxiv: “We are proud of that corner of Westminster where cluster together our national valhalla.”

<sup>2</sup> See p. 145 above.

died in the Holy Land, standard-bearer to Richard I. Oddly enough the name of the King's real banner-bearer (*vexillifer*) on this crusade is known ; he was Henry Tyes (*Teutonicus*.)<sup>1</sup> One cannot but congratulate the author on the admirable principle of his work. He tells us in his introduction that—

The disclosure of facts and verification of evidence have been his main objects. Facts he has allowed to speak for themselves, and has not written up the subject, or by inserting what he deemed unnecessary disquisitions swollen the volume beyond due proportions.<sup>2</sup>

We apply this principle to the long account of Sir Michael which meets us early in the work and find that, as there are no facts, unfortunately, concerning him, it is written up by such statements as that “it seems fair to assume that the Standard Bearer whom Cœur de Lion chose to take with him to Palestine, in the good ship ‘Esnacche (*sic*) Regis,’ was a man after his own heart,” and it is swollen by inserting a lengthy extract from the Pipe Roll of 2 Ric. I and another from the history of “John, Lord de Joinville,” neither of which refers, in any way whatever, to Sir Michael.

This, in short, is mere padding, and—which is much more serious—padding somewhat disastrous to the learned author's reputation. For, although we read of Jean de Joinville's “interesting description of the Standard as displayed in the Holy Land” that “it is in Chapter 10 of Book IV,” we recognise that description as referring to the

<sup>1</sup> See the *Itinerarium*.

<sup>2</sup> These proportions, it will be remembered, are 15 ins. × 11. in., and 4 ins. deep, and nearly 17 lbs. in weight.

battle of Arsuf in 1191, long before Jean was born ! Not till the 14th Century did the Sire de Joinville compile his memoirs, and Dr. Copinger may rest assured that his recollections did not include a battle fought in the twelfth ! The real source of the description quoted is, of course, familiar to historians.

And I have something more to say of this "interesting description of the standard." The only reason, obviously, for thus dragging it in is that "Michael de Carington" is alleged to have been "standard bearer" to Richard I. at the time. But how is "the standard" described ? Here is Dr. Copinger's version :—

The Normans defended the standard, which we do not consider it irrelevant here to describe. It was formed of a long beam, like the mast of a ship ; made of most solid ceiled work on four wheels ; put together with joints, bound with iron, and to all appearance no sword or axe could cut or fire injure it. . . . . It is very properly drawn on wheels, for it is advanced when the enemy yields, and drawn back if they press on, according to the state of the battle.

Now does the learned author really suppose that this was the "standard" his hero bore when he went into battle ? And, if not, why is this description thus dragged in ? To support such a structure—"a car surmounted by a tower as high as a minaret", as Bohâdin (the Arabic historian) describes it on the same occasion—would baffle the skill of a professional tumbler or even of the strong man of a modern music-hall. Would Dr. Copinger imply that Sir Michael was a man of

superhuman strength, while proudly allowing the facts "to speak for themselves"? The true explanation, it is to be feared, is that he was quite ignorant that "the Standard," as it was then termed, the great mast on a wheeled platform, which formed the rallying point in battle and gave its name to "the battle of the Standard" (1138), was quite distinct from the King's banner, which is what Sir Michael would have borne, had he ever existed and had he really acted as *vexillifer regis*.

Not content with expanding, in the case of Sir Michael himself, the bald statement in the spurious narrative, the author weaves about it a perfect web of conjecture,—or should we say of "facts"? His alleged father, for instance, sells "full half of the Parish of Sale, near Manchester," because

The proceeds of this sale were required to equip Adam's son Michael, with his retinue, in a fit and proper manner to fulfil the very important office for which he had been appointed, being that of Royal Standard Bearer to the English army in the third Crusade.

We read further, under Adam de Carington, that

The Manor of Carington being only four miles from Warrington, tradition favours the belief that Hubert Walter recommended Michael de Carington to the notice of the lion-hearted Richard, which led to his appointment as Standard Bearer to the King.

Viewed as a family speculation, the third Crusade was a failure.

Very little remained after two years to compensate for the loss of Sir Michael de Carington's life, and the squan-

dering of the proceeds of half the parish of Sale, except a report in the Archives of the Heralds, and an effigy<sup>1</sup> in St. John's Church, Chester, so it is not surprising to find that the first very costly Crusade was not repeated by the family.

Why has not the author given us this "report"? It should prove of the highest interest to historians, the more so as Heralds' college was not even founded till nearly three centuries after the date of the Crusade.

Dr. Copinger does not allow us to forget that the family has always done the thing well, and quite regardless of expense, whether in the days of Richard I or in our own. His readers will learn of the "costly overhauling" of Ashby Folville church roof some years ago, of the "efficient hot water apparatus furnished by Mr. Carington," of the "handsome stained glass window inserted" in the tower, of the "handsome balustrading" which helps to impart "an imposing appearance" to the hall, and of "four figures being paid" for a single addition to the stud, for which "no expense was spared... no capital stinted." One is reminded by the author's opulent style of that immortal work, *Sandford and Merton*, in which Harry Sandford, when privileged to visit the wealthy Mr. Merton's seat, "was carried through costly apartments,

<sup>1</sup> This appears to be identified as that of a crusader on the ground that just enough remains of the legs "to show that they had been crossed"—a long exploded error. But so eager is Dr. Copinger to discover some real trace of Sir Michael Carington's existence that he rashly writes: "the curious chain armour and long surcoat are peculiar to the period 1190-92; the effigy in Salisbury cathedral of William Longepée Earl of Salisbury, half-brother to Richard I, is an excellent example of this body armour" (p. 18). As Earl William did not die till 1226, the statement that his effigy shows us the armour peculiar to the period 1190-92 appears singularly unfortunate.

where everything that could please the eye or contribute to convenience was assembled," while "the very plates and knives and forks were silver." And this sumptuous record of the family and its glories must have also been produced at a heavy cost. The same lavish spirit had animated Sir Michael on his crusade, for we read of his alleged sons that—

These two brothers may have thought that the loss of their father's life,<sup>1</sup> together with a great landed estate (half of the parish of Sale), with an enormous amount of costly supplies, and many followers with their equipment, for the King's service in war, might justly excuse the payment of any further 'aid to the King' for that time.

What, then, was the amount of the 'aid' against which they might claim to set the enormous sacrifices of their house? It was *two shillings from each*. The passage quoted above follows immediately on the words :—

Mathew de Karington, son of Sir Michael, is on the same 'De Oblatis Roll' [of 1220], disseised of two solidos in aid of the King. "Matheus de Karington debet duos solidos pro eodem".

Now Dr. Copinger is a Professor of Law ; and "disseised" is a legal term. One would really like to know what meaning, if any, he attaches to the phrase he has employed. One may also enquire why the word *debet* should receive this strange rendering. And why, oh ! why was there no one at hand to explain to the learned author that *solidus* was Latin for a shilling ?

<sup>1</sup> Nearly 30 years before !

We have seen that "John, lord de Joinville" is cited by Dr. Copinger for a description, which his work does not and could not contain, of a 'standard' which Sir Michael de Carington did not and could not bear, even if that eminent man had ever existed in the flesh. For the siege and fall of Acre authorities are likewise cited. Between 'Dart's Canterbury' and 'Haydn's Dates, etc.' we find snugly ensconced 'Bohn's Richard I.' One does not recognise Bohn as the name of a medieval chronicler; but as that of a Victorian translator it seems strangely familiar. But his valuable assistance, unfortunately, was lacking for the record which contains the words *debet duos solidos*.

If I have handled severely such use of authorities as this, it is not without a cause. This work proclaims itself at the very head of its prospectus as "of great genealogical and historical interest;" it is boldly described in the same prospectus as being "of very considerable general historical importance." Its 'historical' value and character have now been made manifest; of its "genealogical interest" it is enough here to say that, having based the very existence of Sir Michael de Carington the standard-bearer on the spurious narrative alone, the author proceeds to endow him with a father and two sons, not one of whom is so much as named even in that forgery itself! What then becomes of his boast at the outset that "each descent is fully verified," a boast which the prospectus of the work is careful to repeat?

But we must hasten on towards the episode on which everything turns, the alleged exchange by



John Carington, heir-male of the 'standard bearer' and head of the Cheshire house, of his surname for that of Smith *circ.* 1404.

I have dealt above<sup>1</sup> with the author's treatment of the pedigree connecting 'Sir Michael' with John, and have shown that, while relying on its unsupported testimony as sufficient evidence, he has no hesitation, notwithstanding, in tacitly rejecting certain of its statements. In short the narrative he produces is simply a 'blend' of his own, in which the evidence of records is mixed up with the statements, however contradictory to it, of the forged narrative. This is what I have often denounced as the practice of putting, genealogically, new wine into old bottles. We can deal with pedigrees based on records: we can also deal with pedigrees based on spurious narratives. But, like oil and water, the two will not combine; and when it is attempted to mix them up, the result is chaos. The alleged double marriage of Sir William de Carington would alone be sufficient to prove it.

To that marriage I now turn. We have seen above how Dr. Copinger had no hesitation in altering the pedigree given in the spurious narrative, while inserting, on the authority of that narrative alone (though we are left to discover that it is so), such 'facts' as that Sir Edmund de Carrington was "in ye daies of King Edward II at ye battail of Strivelin (Stirling) Scotland (1314) where the said Sir Edmund was sore wounded, yet escaped with lyffe, but dyed shortly after." The

narrative assigns him for father Sir William Carington, who married Anne Farnell, and states that this Sir William was knighted by Edward I, "in whose time he died." Dr. Copinger accepts the marriage and the knighting, but makes him an elder brother of Sir Edmund and does not allow him to die till "about 1334."<sup>1</sup> Of Sir William, whom he makes his grandson, Dr. Copinger accepts from the narrative his presence at the battle of Sluys (1340) on which he descants, but discredits, as we have seen, its story that he became blind "shortly after." It is however in dealing with his marriages that the 'blending' system, as I have termed it, is at its best.

For this Sir William was a real man, and he had a real wife, Maud de Arderne, and Dr. Copinger has no difficulty in finding plenty of record evidence of both of them, the first document mentioning the wife being apparently of 1357.<sup>2</sup> But for any other wife not a single record can be vouched. The spurious narrative, however, ignores this real wife and substitutes for her "Katherin sister to Wm. Montacute Erle of Salisbury," whom it makes the mother of his son and heir, Sir Thomas. What then does Dr.

<sup>1</sup> Edward I. died in 1307.

<sup>2</sup> On p. 36 we read that "This Sir William de Carington was a defendant conjointly with Matilda or Maud (his second wife) in a plea of trespass in 1357 (31 Edward III)", and on p. 43 that "Matilda, second wife of Sir William de Carington, in 1358, joined with him in a grant.... This grant proves that Matilda was married in or before 1358". Yet on p. 35 (in its due chronological place) we learn that "In 1351 (*sic*) John the son of Edward Warren enfeoffed Sir William Carington, knt. and Matilda his wife in all the messuages etc.... which he inherited on the death... in the 45th year of the reign of King Edward the 3rd" [i.e. 1371-2!]. But on reference to pp. 37, 43, this is found to be one of the careless blunders in this book, the deed being clearly much later than "1351"

Copinger do? He calmly adopts, we discover, *both* wives, making Sir William marry first "Lady (*sic*) Katherine de Montacute," and then take Maud de Arderne as his second wife!

This alleged Montacute connexion is very precious to the author; it enables him to "spread himself," one might say, on that alliance (pp. 41-2, 47-8), and to drag in "the Feast of the Round Table" in 1344, "the beautiful sentiments and grand rules of chivalry," "the coats and hose of gentlemen," their "long-toed boots," and other "gay things."<sup>1</sup> In fact, the subject is "written up," to quote Dr. Copinger's phrase,<sup>2</sup> in the most approved fashion. He even ventures on the daring assertion (p. 41) that "This Sir William de Carrington adopted the three lozenges<sup>3</sup> in honour of his wife, Lady Katherine de Montacute, whose family arms were Argent, three lozenges in fesse gules"<sup>4</sup>—a statement which I have seen nowhere else, but which is doubtless highly gratifying to Sir William's alleged descendant, who can reflect on the noble origin of his coat as often as he sees it proudly swinging in front of his village public-house.

Now the mother of "Lady Katherine," Dr. Copinger observes, is commemorated by what is still "the most highly valued sepulchral monument in Oxford." And "in 1346"<sup>5</sup> this lady, as

<sup>1</sup> This phrase is taken from the description of Elizabethan England by Harrison, who tells us how the Heralds, in their grants of arms, "do of custom pretend antiquity and service, and many gay things".

<sup>2</sup> See p. 155 above.

<sup>3</sup> On the bend in the Carington arms.

The real heraldic expert would not accept 'lozenges' as the right blazon in the Montacute coat, but it is the one usually given.

<sup>5</sup> The date is given in the cartulary as 16 Feb. 1347/8.

he explains, founded a chantry there for the souls of herself and her relatives, whom she names, one by one. Among these were her four sons and her six daughters. *And among the daughters we seek in vain for the name of "Lady Katherine."*<sup>1</sup> But surely this, it will be said, cannot have been known to the author. If not, it is strange that he should give a lengthy abstract of the document, in which he names, one by one, the four sons, and then—breaking off—adds "and the daughters likewise." Had he similarly named the daughters, the absence of "Lady Katherine" could not have escaped notice. It is Dr. Copinger's claim that "the disclosure of facts and verification of evidence have been his main objects." They are mine also.

In short, I do not hesitate to say that "Lady Katherine de Montacute," her marriage to Sir William, and her children<sup>2</sup> are all alike fictitious and sheer inventions of the man who forged the spurious narrative. It might, one would think, have aroused suspicion that her alleged brother, the earl of Salisbury, died in 1344 aged 43 (p. 47), while the first certain mention of her alleged husband in a record is in 1357 (p. 35), in which year he was already married to Maud de Arderne.<sup>3</sup>

The fact is that the forger was wrong throughout

<sup>1</sup> *Cartulary of St. Frideswide's* (Oxford Hist. Soc.) II, 9. No reference is given by the author.

<sup>2</sup> Sir Thomas is a real man, but he was not her son.

<sup>3</sup> On pp. 34-5 and 48 there is cited (but only from a "note by Randle Holme") a warrant to supply Sir William de Carrington and Thomas de Carrington with necessaries for warre", which is assigned to 1348; but there is clearly some mistake in the date. For Thomas is not again found in any record here quoted till 1374, and he and his father were setting out to war together as late as 1378. Moreover, John de Carington, the alleged *grandfather* of Thomas, was defendant with William his son in 1348, and was living at least as late as 1350 (p. 31).

in his chronology. He made both Sir William de Carington and Sir Thomas his son live rather earlier than they actually did. And he made, we shall see, the same mistake in dealing with the famous John, Sir Thomas' alleged son.

But let us begin in the next generation, as Dr. Copinger would have us do, holding that "it is sufficient to commence with John Carington's father," Sir Thomas Carington.

The supposed "John Carington" is made to give us a chronological sketch of his father's life, in which are found two statements that, on Dr. Copinger's own showing, are false:—

- (1) He places his father's marriage after his grandfather's death and before the Black Prince's expedition into Spain in 1367.<sup>1</sup> But on Dr. Copinger's own showing, John's grandfather Sir William did not die till 1378.
- (2) He definitely states that his father received leave from the Prince, after the Spanish expedition (i. e. in 1367), to return to England for his health (which was quite broken) and "leven all the remnante of his dayes in London and there nigh aboute and decessed in London in the sixth yeare of King Richarde the Seconde" [1382-3.] Dr. Copinger accepts this statement on p. 52, where he writes that Sir Thomas died in 1383 after living "about 14 years in London and there nigh about." Yet he himself has shown on the three preceding pages (49-51) that Sir Thomas,—the supposed broken man as early as 1367, with "over mickle gout and rheumatism" and suffering "anguishe and paynes,"—was, on the contrary, actively going

<sup>1</sup> "did live long a bacheller, and *after his father deyen* hem soude mickle landes to payne hes debtes for him spent mickle in Gasconye... which [? while] his father leven, and at length spoused Margaret Roos, daughter of Sir Robert Roos, and at suche tyme as Prince Edward gone into Spayne" etc. etc.

beyond the seas on the King's service,<sup>1</sup> and, when in England, duly occurring, not in London, but in Cheshire!

In fact the supposed narrator, John, is altogether at sea as to his father's life. He makes the active career of Sir Thomas close in 1367, after years spent in Gascony, while that of the real Sir Thomas, according to records, did not even begin till 1374 and continued to 1383.

As to his alleged brother-in-law, Sir Thomas Wake, the statement placed in the mouth of "John" is demonstrably false. He is made to say that his father, Sir Thomas, having been left by the Black Prince in "Rovergne" as seneschal in 1367, induced the Prince, on the ground of his broken health, "for his love," to "make Sir Thomas Wake, whome long beforen hade espoused his sister Katerine Carington, Seneschall of Rovergne in his rome." Now Mr. Stevenson has called my attention to the fact that Sir Thomas Wake actually was seneschal of Rouergue in 1369, a fact which he thinks the rascally romancer got from Berners' Froissart, as the curious spelling 'Rovergne' is also found in that work. But Sir Thomas Carington is nowhere mentioned as seneschal, and the idea of connecting him with Wake was probably suggested by an entry in the *Fædera*<sup>2</sup>—several years later—which records letters of protection for him and for Sir Thomas Wake of *Blisworth*<sup>3</sup> as going beyond sea in the King's service.

<sup>1</sup> This, it will be seen, is exactly parallel with the forger's other blunder in making his father, Sir William, go blind (see p. 152 above).

<sup>2</sup> i.e. now printed in the *Fædera*.

<sup>3</sup> I italicise this as identifying the Sir Thomas Wake in question. For the chart pedigree makes Katherine Carington marry Sir Thomas Wake of "Cottingham"!

The mention of Sir Thomas Wake reminds me that, as I observed above, the fictitious Katherine Montacute is provided with fictitious children by Sir William. They are thus set out in the Herald's pedigree :<sup>1</sup>

Sir	Michael	Ellin	<i>m.</i>	Katherine	Anne	Isabel
Thomas	Carring-	ton	died	<i>m.</i> to	a	<i>m.</i>
Carring-	ton	in	John	Sir	Nonne.	Sir
ton <i>m.</i>		Curson.	Thomas	Wake.		Nicholas
Margarett	Spaine.					Faring-
dau. of						ton.
Sir Robert						
Roos.						

and there is a separate notice of each in Dr. Copinger's book. It is not possible to discover from his pages the source of his information about Michael, but Rouge Dragon's pedigree again enables us to trace it to the spurious narrative. We there read of Sir William that "His yonger son Michael was taken prisoner in the fight on the sea beffore Rochell (with y<sup>e</sup> Erle of Pembroke) and carried into Spaine where he died." This statement follows immediately on the false story of his father's blindness.

The daughters' marriages are not to be found in authentic pedigrees of the families concerned; but of the eldest we shall hear again. Her husband is expanded by Dr. Copinger into "Sir John Curzon, knt., of Kettlestone (*sic*), co. Derby,"—his playful way of spelling that Kedleston, from which Lord Curzon takes his title.

<sup>1</sup> See p. 147 note <sup>1</sup> above.

The alleged wife of Sir Thomas Carington may be quite as fictitious as his mother, his brother, his sisters, and perhaps, his heir. For the existence of all alike depends on the spurious narrative alone; and we are now discovering what its evidence is worth. The deliberate invention of wives—at times with impossible or grotesque names—was a regular practice of the pedigree-maker in the days of his greatest triumphs. A particularly choice example is afforded by the pedigree of Clervaux of Croft from the 1612 visitation of Yorkshire.<sup>1</sup> Of eight generations from the Conquest five are remarkable for their matches. In one the wife is ‘Amaretta,’ daughter of ‘Dominus’ Nevill de Hornby; in a second, she is ‘Oswalda,’ daughter of Adam Brus; in a third ‘Timothea,’ daughter of John Gascoigne; in a fourth ‘Herodia,’ daughter of ‘the Lord Marmion’; and in a fifth, by a crowning effort, ‘Jamathela,’ daughter of John Nesom of Nesom! Either the pedigree-maker was jesting at his patron’s expense, or the latter craved for ancestry of even weirder form than the “Hambrusch” or the “Iver Appland Jarf” of Mr. Richard Smith—“Carington.”

Dr. Copinger’s treatment of the alleged wife really requires some notice. He thinks (p. 52) she “was probably a daughter of the Sir Robert de Roos, knt.” who “was the son of Thomas de Roos,<sup>2</sup> third son of William 2nd Baron”, and appends on the opposite page a large chart pedigree, showing what “was most probably the descent.”

<sup>1</sup> According to Foster’s edition of the Yorkshire Visitations, p. 412.

<sup>2</sup> No such person appears in the chart pedigree.



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But in this pedigree her father Sir Robert, "of Gedney, co. Lincs.," is entered, on the contrary, as second son of "Sir James de Roos" son of Sir Robert de Ros.<sup>1</sup> On p. 70 we are given yet another version and read of 'John de Carington':—

John de Carington, second son of Sir Thomas by Margaret, daughter of Sir Robert Roos, succeeded to the inheritance of Gedney Manor, co. Linc., formerly the possession of his uncle John, Baron Roos, of Hamlake, who died at (*sic*) Brabant in the King's service, the 15 June 1338, or soon after without issue.

This assigns to Sir Robert yet another father, as, we learn, he was brother of the John who died in 1338. But on examining the appendix on "the Roos family,"<sup>2</sup> we find tolerably clear evidence, though in a disjointed form, that Sir Robert de Roos, of Gedney, who died in December 1381, was son of James de Roos, who was son of another Robert, all of Gedney.<sup>3</sup> No John de Roos who died 1338 is to be discovered in this appendix as Lord of Gedney. And what is far more serious is that this appendix does not contain a word to show that John de Carington succeeded—as so definitely stated—to Gedney, a fact which would afford the only evidence of his connexion with the Roos family, and which would be, therefore, of the utmost importance—if it were true.

And so we come to John himself, the John

<sup>1</sup> An *erratum* does not affect this in any way.

<sup>2</sup> Materials collected by Mr. Richard Smith—'Carington'.

<sup>3</sup> As a matter of fact, the descent of Gedney is quite clear. Robert de Ros who held (a third of) Gedney in 1303 (*Feudal Aids*) had been enfeoffed by Simon le Constable (*Wrottesley's Pedigrees from the Plea Rolls*, pp. 21, 63) and was father of James, who held in 1334 and 1346 (*Feudal Aids*), who was father of Robert. The account in the above Appendix is most confusing.

on whom all turns. The allegation is that Sir Thomas, by his supposed wife, Margaret de Roos, had two sons, Edmund and JOHN. Leaving Edmund alone for the moment, we find the spurious narrative beginning its account of John with the statement that he "was nurterede up by Sir John Nevell in tyme of his yougth in Gasconye." Now this at once confirms my view that the forger of this narrative was all at sea in his chronology. For Dr. Copinger asserts that 'John de Carington was born in 1374'; and Sir John Nevill was a famous soldier, who was made Lieutenant of Aquitaine in 1378 and landed in Gascony that year (1 September). His busy stay in that stormy province only extended to the summer of 1381, so that we are asked to believe that the infant John was removed from the Carington nursery at the age of four, shipped off to Gascony to be "nurterede" by a busy general, and trained by him in the King's service to the age, at most, of seven!

Our precious narrative then proceeds :—

and when he was a man, hime servinge Kinge Richarde in thoes cuntreyes with him was nere six and twenty yeares olde, and about thilke season he herringe teydinges how his brother deceased was and eke that he had byn made executore he spede him into Englande and in a whill... becomen Kinge Richarde's sarvante, etc. (p. 73).

We now see how Dr. Copinger obtained his date for John's birth, '1374'. As Richard fell in August 1399, 1374 was the latest date he could assign. It is, as a fact, too late to admit of John's returning and taking service with Richard; but it would have been awkward for the pedigree

to have placed the birth earlier. The forger had not been troubled by this, because, as I said, his chronology was wrong, and he clearly reckoned John, like his alleged father and grandfather, to have been born earlier than they could have been.

But let us continue Dr. Copinger's account of John's career. A great difficulty faced him. The historians of Cheshire and the Cheshire records know nothing of Edmund or of John.<sup>1</sup> After Sir Thomas, who did not die till 1383 (p. 52), the next certain lord of Carington is Sir George de Carington, who was undoubtedly in possession in 1402, and apparently so at least as early as 1397. In order to foist into the pedigree Edmund and John, as required by the spurious narrative, Dr. Copinger alleges that John succeeded as heir to his elder brother Edmund, but that, after he had to flee the country at the end of 1399, the manor was wrongfully seized by his 'uncle' George. That, however, is by no means the story that is told by the spurious narrative on which alone he is dependent for the existence of Edmund and of John. According to that veracious tale, John returned to England, not because he was *heir* to his brother (who, indeed, had two daughters), but because "he had byn made *executore*." Nor does the narrative know anything of his succeeding to the manor or of his uncle supplanting him.

Of Edmund the narrative appended to the heraldic pedigree states that :—

<sup>1</sup> Dr. Copinger does not produce record evidence for the existence of either.

Edmond Carington espoused Jane Ferris, daughter of Sir John Ferris, and was a weeke, feeble man, and efte full of maladye, and him levide ever more at whome one his livelihode and heritage. And him lefte his life the one and twentye yere of King Richarde and leften ownely two daughters *heritter of his heritage*,<sup>1</sup> to witten, Isabell wedded was unto un esquier ycleped Thomas Nevill and Katheryne wedded was unto ane esquier ycleped John Trayntham whome had all onley daughters two and sonnes none.

It will be observed that, as I stated, the narrative represents Edmund as leaving his daughters heirs to his heritage, while Dr. Copinger writes, on the contrary, of John that :—

On the death of his only brother, Edmund, without male issue, in 1398, he became the Head and Chief of all the Carington family, and by birth-right Lord of the Manor of Carington.

But, after he fled for his life (1399), we learn :—

His enforced absence from England induced his uncle George... to seize the manor. (p. 78.)<sup>2</sup>

So far as I can find, the alleged seizure is as purely fictitious as anything to be found in the spurious narrative itself.

With that narrative, and with its spuriousness, I now proceed to deal.

The internal evidence of this narrative affords us two tests by which its genuineness or the reverse can be effectually determined. The first of these is *philological*; the second is *historical*.

A good parallel is afforded by the documents

<sup>1</sup> The italics are mine.

<sup>2</sup> See also pp. 57-8 and p. 1.

which were similarly produced to Cooke, Clarendieux, in 15 Eliz. (1573-4) by Augustine Steward to prove his descent from the royal Stewarts, and were similarly accepted by that egregious herald. In that case the forger chose as his medium what he believed to be Norman French, fearing (Mr. Rye suggests) to venture on English archaisms. The result, however, is now the same, for M. Michel wrote of the pretended grant in 1385 "it is enough to cast the eye on these pretended letters of concession to recognise the *patois* of an Englishman little familiar with the language spoken at Paris at the end of the fourteenth century, and to doubt the fact asserted by the writer."<sup>1</sup> The fabulous Bertie pedigree made its appearance (in Latin and in bastard French) about the same time;<sup>2</sup> and so did one of the fabulous pedigrees provided for the great Burghley, with its contest for the Cecil arms between Sir John Sitsilt and Sir William Fakenham in the 6th year of Edward III "fairly writ in a French which may be described as Elizabethan Wardour-street of the most sumptuous character."<sup>3</sup>

Entitled "The Pedigree and Exploits in Foreign Countries of John Carington, Armiger, as related by himself to the year 1404," the narrative purports to have been written by John with his own hand and related (?) to his wife shortly before his death in 1446 at the age of over 70.<sup>4</sup> The

<sup>1</sup> See, for this forged document and for the whole business, Mr. Rye's papers in *Genealogist* (N. S.) I, 150; II, 34; and my *Peerage Studies*, pp. 131-134.

<sup>2</sup> See the paper on "the rise of the Berties."

<sup>3</sup> See Mr. Barron's *Northamptonshire Families*.

<sup>4</sup> "Et hæc supra fewerant (*sic*) propria scripta Manu ejusdem Johannes (*sic*) Carington et relata, Erant relictæ (*sic*) uxori ejus nomine Milicentia, Paulum antequam obiit" (p. 76 of Dr. Copinger's book).

English, therefore, should be that of the early part of the 15th century. To me, indeed, it savoured rather of "Ye Olde Englyshe Fancye Fayre," but I duly submitted it to an expert, whose verdict must prove decisive. This was Mr. W. H. Stevenson,<sup>1</sup> who most kindly wrote for me an elaborate report on the subject, which I here append, omitting only certain minute critical points.<sup>2</sup>

#### MR. STEVENSON'S REPORT.

It is hardly possible that any one who has studied English philology at all scientifically can believe that the Smith Carrington [narrative] written in the year 14—can be genuine. In the first place the style is not that of the early fifteenth century. One has only to compare it with the later Malory's *Morte Darthur* or with Lord Berners' translation of Froissart, published in 1523, to realise that the literary atmosphere is not that of the time it pretends to be. It is, to say the least, suspicious from the point of view of style. The argument from style may be thought to be largely subjective and therefore not conclusive. Language affords a more satisfactory test. *Here the compilation fails altogether.*<sup>3</sup> I do not lay stress upon the sixteenth century forms such as *livelihode* instead of *livelode*, the plural form *folkes*, *coulden* for *coude*, and a few other suspicious forms, such as *spoused*=married, *rheumatism*, etc., since it may be pleaded that these are more or less unconscious modernisations or elaborations by the sixteenth century copyist. *It is the grammar that makes it impossible. There are forms and usages in it that never existed, or could have existed in any English dialect at any period, and it is impossible to explain them upon any other hypothesis than that they are the products of a person*

<sup>1</sup> Research fellow of Exeter and afterwards of St. John's, Oxford.

<sup>2</sup> Dugdale's transcript (see p. 148) preserves the same peculiarities of language.

<sup>3</sup> The italics are my own.

*unskilled in Middle English who was trying, with a most extraordinary lack of grammatical power, to concoct a narrative that should seem, from its deviations from the language of his time, to be the product of a couple of centuries or so earlier. It is a most clumsy performance.*<sup>1</sup>

The concoctor has evidently read some Middle English, probably Chaucer. He has noticed a pronoun *thilke*, but has not observed that it was used as a demonstrative, usually an emphatic demonstrative, and he consequently employs it as a mere relative pronoun and even pleonastically in *thilke selfe*, for *thilke* means the same, that very same.... So also he speaks of "the *ilke same* citey". An even worse blunder is the formation of preterites, even singulars, by means of adding the suffix *—en* to the uninflected base of the present tense, e.g. "his father *deyen*", Prince Edward "*gone* into Spayne".... "he *becomen* Kinge Richarde's sarvante and *serven* him", "he *aboden*"..... "him *liggen*" (lies), "his father *leven*" (left).... Third person singular preterite such as *deyen*, *gone*, *maken*.... and third persons plural preterite such as *followen*, *hopen*, *comen*, are impossible formations due to the concoctor's ignorance and his astounding want of a grammatical sense. At no time were singulars formed with *—en*. So fond was he of this termination that he applies it to present infinitives, such as "to payne" (pay, a Romance word),... "to goen," "did letten," "was comen," "to sleyen",... and to the past participles "endytten" and the gerunds "to witten," which occurs several times, and "to done," and he even says "beforen" for "before" and "every wharen" for "everywhere."

Perhaps by way of compensation he uses the equally impossible past participle "slayned" for "slain." Equally absurd and inexplicable is the use of "him," "hem," for nominatives singular and plural instead of accusatives and datives, and in like manner "whome" for "who." Another erroneous usage is that of putting the verb substantive after, instead of before, the participle, as "he

<sup>1</sup> The italics are my own.

comen was," "wedded was," "deceased was," "comen warren," "bow(n)den was," "sprode were" (were spread), etc. In Middle English *mickle* is both an adjective and an adverb: for the latter he uses "micleye"!... Where he got "hentell" and "hentull" for "until" I cannot guess: they look like mere arbitrary spellings intended to give the composition an air of antiquity... As it is *such an obvious concoction*,<sup>1</sup> it is to be regretted that Mr Horwood should have gone out of his way in an official publication to say that "the phraseology and spelling" show that this precious document "must have been copied from a document of the fifteenth century." Such an observation, which only proves his own incapacity for judging any English philological question, naturally misleads persons disposed to believe in the authenticity of this document, since it is capable of being cited as the deliberate opinion of an expert in historical evidence and as therefore excluding any possibility of forgery, although *the document bears the marks of spuriousness in every line*.<sup>2</sup>

To these philological criticisms I will only add the observation that the forger is not even consistent in his absurdities. He writes both "ownely" and 'onlye'; he gives us 'hentill,' 'hentall' and 'hentull' for 'until,' while the word "were" appears in the forms "ware," "waren," "warren," "weren," "werren," and "woren"! So also "abeyden," "abiden," "aboden." And in naming towns he writes "a towne... ycleped 'Poole'," "great towne... that highte Treves," "a great city that cleped is Bolonia," "a great towne... called Bizanson," "Amsterdam, a cittye<sup>3</sup> in Holland," "a town cleped Ipswich." "

With regard, however, to Mr. Horwood, it

<sup>1</sup> The italics are my own.

<sup>2</sup> The italics are my own.

He also gives this word as "cetye"!



is only fair to remember that, however rash and unfortunate may have been his expression of opinion, he was reporting on a multitude of documents, of which this was only one and he could not be expected to submit it to critical investigation, for which his duties did not afford the time.

Far different is the case of Dr. Copinger. For him this is the one document by which his pedigree stands or falls.<sup>1</sup> Knowing its importance, he has printed in full the narrative it assigns to "John Carington" and accepts its genuineness absolutely. It is needless to dwell on the absurdity of its language as sufficient to have warned him of its nature; for however great may be his ignorance of the history of the English tongue,<sup>2</sup> he was driven, we have seen, in using this document, to reject evidence which it contained as to pedigree and also as to fact. Why then does he accept its evidence on other points and assert it to be "correct in what it states"? I shall now, however, produce further and conclusive proof that, at the very crisis of the story, its narrative is a reckless fiction.

It will be remembered that the pedigree in the document makes Sir William Carington marry a sister of the earl of Salisbury, by whom he had,

<sup>1</sup> He himself states, in his Introduction, that the "verification of evidence" has been one of "his main objects." How did he verify the genuineness of this narrative?

<sup>2</sup> I do not throw any doubt on the possibility of this ignorance, for I observe that to the phrase "with wroth and rage him fallen a nigh wode," he appends for 'wode' the gloss '(would)'. 'Wode,' of course, was used by the concoctor as an obsolete word for 'mad'. There is a good instance of its use in the lines on the title pages of the great Fitzwilliam genealogy:—

"No marvell though I be wode  
Which am berevid of land and goode."

with Sir Thomas (father of the alleged John), two daughters, Ellin wife of John Curson and Katherin wife of Sir Thomas Wake, and other issue. We subsequently read that, on the retirement of Sir Thomas Carington, the Black Prince "for his love did letten make Sir Thomas Wake, whom longe beforen had espoused his sister Katerine Carington, seneschall," etc. Now Sir Thomas Wake is a known man, head of his house at the time; and his wife was not a Carington, but Alice Pateshull, an heiress.<sup>1</sup>

The fictitious 'Salisbury' marriage is introduced to account for the part taken in the plot against Henry IV (Christmas 1399) by the alleged 'John Carington,' he being 'nigh of lyneage of the Earlle of Salisbury.' But it is the 'Curson' marriage that proves the narrator's ruin.

Dr. Copinger tells us (p. 55) that

Eleanor de Carington, eldest daughter of Sir William and Lady Katherine, married Sir John Curzon, knt., of Kettlestone (*sic*), co. Derby, and had issue William Curzon, who, in early life, was a monk at Reading Abbey, but was elected abbot in 1403 of St Osyth, at Chich co. Essex. About a year after his appointment his first cousin, John Caryngton, called on him immediately after his arrival at Ipswich from Amsterdam.

These statements are extremely definite, but I am in a position to state, not only that no such abbot of St. Osyth's as William Curzon is known, but that the abbot of that house in 1403-4 was Thomas of London!<sup>2</sup>

<sup>1</sup> *Northamptonshire Families* (V.C.H.) p. 320.

<sup>2</sup> *Victoria History of Essex*, II, 159, 162; and *Calendar of Patent Rolls*, Henry IV, II, 356, 468.

From this there is absolutely no escape. For it is not a question of a mere slip on a point of secondary importance; it is the lynchpin of the narrative that is here withdrawn. The return of 'John Carington' and his adoption of the name of Smith (Smyth) are thus accounted for by the forger :—

“ ne durste goe into England hentull at lengthe it beteyden that two freyeris comen out of Englande and eke going to Rome whome for certe geven him to wetten that wone, William Curssone, a younger sonne of a Knighte cleped Sir John Cursone was, and he had byne Abbott of Sant Ooses in Essex a yeare and more which tydinges was to him great joye for cause this Abbott was a sonne of his fathers elder Suster cleped Elleyne, somtyme wife of Sir John Curson both whom warden deceassed long before. But John Carington bethoughten howe he mowton gett him into Englande without perill... He therefore... changed his name and called himselfe John Smyth, that he mowten by thilke name everye wharen voyden suspecte and perill when he mowten comen into England.....

And one the morowe him yode toward Sant Ooses, where being comen, he offerede him selfe to thilke Abbott whom had nygh forgotten him for cause this Abbott had never sene him ere but once onely at Reddinge Abbye where thilke Abbott was then a monke at what time John Carington camen out of Gasconye. But natheless when thilke Abbott talked with him in secrete he efte sone understode of his streene and lyneage and ded him grettlye welcome, and cherishe and eke him warne not to descryne whom he was.... and not long after did one him bestowe mickell benefittes and ded him after advance to wedlock mickleye to his contente, and he never fayllen him in his nede, but purchasede and indowede him with fayer landes and livelihode as... yeares warden wende aboute. So much he ded him love and like.

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As the abbot in 1403-4 was not William Curson, but a wholly different person, it will be seen that, as I stated, the narrative is a reckless fiction. An imaginary John Carington is endowed by an imaginary abbot with a wife who would not have been his to give even if he had really existed.

So all goes. Sir Michael Carington, the gallant standard bearer; the pedigree which, in Dr. Copinger's words, "is taken back.... in a *direct male line* to the Conquest," and of which "each descent is fully verified;" the 'Carington knight' who caracoles as a tail-piece to his Introduction; the 'Carington' arms which adorn his frontispiece and to which he assigns "the place of honour"; the "facts he has allowed to speak for themselves," (p. 2)—they all go; and nothing henceforth remains of 'the great Carington imposture' but Lord Carrington's title and surname, and the Royal Licence so strangely granted to the "Smith-Carington" family in 1904 to bear the name their father had "assumed in accordance with a tradition in the family" (p. 373.).

I am wrong. There remain also Dr. Copinger's book and those arms with which Ashby Folville has been bespattered by its possessors, from "the public house" (p. 423)<sup>1</sup> to the "communion plate" (p. 448).

On those arms I have much to say and we may here fitly examine the whole question of the heraldry. The old coat of the Cheshire Caringtons, which

<sup>1</sup> "The public house was completely rebuilt" is all that the text tells us. But a photograph reveals the fact that "The Royal Oak" as it was named, has been re-christened 'The Carington Arms' (!) and that in front of it swings a signboard with the offending arms in the "place of honour".

has thus been assumed, as their first "quarter," by the "Smith-Carington" family, has never been in doubt. It is "sable, on a bend argent three lozenges of the first," as is proved by the "Ballard" roll (temp. Ed. IV), by drawings of the windows in Bowdon church (1530), and by a seal of William (de Ca)ryngton which Ormerod stated, in 1816, was affixed to a charter of 47 Ed. III (1373-4).<sup>1</sup> On this seal Dr. Copinger comments that "The date of the charter 20 Dec. 1374<sup>2</sup>, proves the use of these arms for upwards of 530 years" (p. 41). Now this is a most misleading statement. The 'Smith-Carington' family do not appear to have assumed them till late Victorian days, while the Essex Smiths, through whom they claim their 'Carington' descent, do not even appear to have ever used them at all!

Has the Heralds' College officially sanctioned their assumption? I am assured by Garter King of Arms himself that it has *not*. Have bygone heralds sanctioned their assumption by Smiths from whom they claim descent? I am prepared to urge that they have *not*. In 'Burke's *Landed Gentry*,' indeed, the arms appear in the first quarter, and Dr. Copinger, in his Introduction, argues in defence, not only of the assumption, but of the arms being given "the most important position in the shield". He writes :—

The present is not a case where a name and arms have been assumed under some clause or provision in the will of a testator requiring the recipient of some benefit

<sup>1</sup> This seal, however, does not show the tinctures.

<sup>2</sup> This date is not compatible with the regnal year 47 Edw. III.

thereunder to take and assume his own name and arms, nor is it on all fours with cases of a name and arms not properly those of the individual being assumed by him by way of addition <sup>1</sup> [!]...... It is the case of a reverter from usage to blood and ancestry, so to speak, the name of Carington and the arms having always belonged to each member of the family as a birthright or blood inheritance. Non-user may have prevented or interfered with the actual right of user, but when the Crown stepped in and granted a Licence—not to take something which did not exist and in a sense already appertain and belong to members of the family before—but to use and bear in *presenti*, there was a revival. The Licence to use operated as a reviving etc.... Surely, then, *when under a duly constituted authority, the family revert to its original arms*, <sup>2</sup> these should be given the place of honour and occupy the most important position in the shield.

With much legal verbiage, as befits a Professor of law, Dr. Copinger argues his point, but omits to mention the essential fact that the Royal Licence (contrary to what is the usual practice) does *not* authorise the family to adopt the arms of the Caringtons and does not even assert their descent from the house of that name<sup>3</sup>! The family has *not* been authorised by “ a duly constituted authority ” to “ revert to its original arms ”, as he is pleased to describe them. The use of the surname alone has received official sanction : the ‘ Carington ’ arms and pedigree have not received that sanction ; and without them the surname, in the language of the schoolmen, is a ‘ substance ’ without ‘ accidents ’, a possession which only commemorates ‘ the great Carington imposture ’.

<sup>1</sup> That is precisely what the case is, so far as the arms are concerned !

<sup>2</sup> The italics are mine.

<sup>3</sup> The Licence is printed on p. 373 of his book.

But these, the old Carington arms, are by no means the only coat assigned to the family by the author. Indeed he speaks (p. 4) of their "having at least at various times borne four different coats of arms", while the great shield which forms his frontispiece actually displays six! After the true Carington coat we have, (2 and 3) two variants thereof; then (4) a coat assigned to a medieval Sir Philip Carington; (5) the coat that was actually borne by the descendants of Sir John Smith (Baron of the Exchequer), and (6) the coat borne by Sir John Smith himself—which was totally different from any of the foregoing. These coats are thus marshalled in accordance with a vicious practice of heralds, who often, when a family had formerly borne a different coat, (or was alleged to have done so) added it, as a quartering, to the coat in use.

Some of the coats enumerated can be disposed of at once. No 2 is No 1 with the colours counter-changed, and seems to be described on p. 41, as "an older tincture (*sic*) used for two centuries previously" to the date of the 1374 charter, the blazon being "argent, a bend sable." But, in the frontispiece, it is shown with lozenges on the bend, which disposes of Dr. Copinger's extraordinary assertion that Sir William "adopted the three lozenges in honour of his wife,"<sup>1</sup> Lady Katherine de Montacute." Coat No. 3 has a curious history, though I cannot find it blazoned or described in this volume. Its blazon seems to be "Argent, on a bend sable three pairs of Fal-

<sup>1</sup> i.e. his fictitious wife. See p. 163.

chions (or scimetars) in saltire or." This was the variant of the Carington coat which, according to Smith, Rougedragon, was allowed by Cooke, Clarencieux, to the descendants of Sir John Smith in 1577, although, as we shall see, they did not use it, nor was it allowed to them at the visitations until at the late Essex visitation (1664-6) it was allowed, but only as a quartering, to the Smiths of Blackmore. It was, as we have seen, entirely distinct from the old Carington coat, which is assumed by the Smith-Carringtons, and, therefore, so far from supporting it, is actually hostile to that assumption.

The fourth coat attributed by Dr. Copinger to the family is soon disposed of. It is separately depicted on p. 26, where it is blazoned as "argent, a lion rampant sable, charged on the shoulder with a fleur-de-lis, as mark of cadency, showing him to be a sixth son."<sup>1</sup> Apart from the fact that marks of cadency with such definite significance were of far later invention, we find, on investigation, that the reading of the name to which this coat<sup>2</sup> is attributed is very doubtful. In *Collect. Top. et Gen.* (IV, 67) it is read as Barington, and it was also so read by Cole in his transcript.<sup>3</sup> Dr. Copinger gives no record evidence for the existence of a Philip de Carrington, but a Philip de Barington<sup>4</sup> is known.

<sup>1</sup> The reference given is Harl. MS. 6137, fos. 31b, 33b.

<sup>2</sup> It is imperfectly blazoned by Dr. Copinger, the lion being a double-tailed one.

<sup>3</sup> Add. MS. 5848, fo. 75.

<sup>4</sup> His name is also given for this coat in Foster's *Some feudal coats of arms*, and Mr. Oswald Barron has been good enough to inform me that the name should be Barington.



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Having thus disposed of the four coats borne for 'Carington,' we turn to the two coats contributed to the achievement by Smith. Unlike the 'Carington' coats, these two were actually borne as their arms by those Smiths from whom the 'Smith-Caringtons' claim descent. The first was argent a cross gules between four peacocks proper;<sup>1</sup> the second—a wholly different and a complicated coat which is somewhat variously blazoned—was borne by their founder, Sir John Smith, baron of the Exchequer under Henry VIII.

Now these two coats are of great importance for our story. The second is depicted by Dr. Copinger on p. 119, and blazoned by him as "Argent, on a chevron sable six fleurs-de-lis or, on a chief of the second a lion passant of the first." He admits, on p. 4, that "Sir John Smith, the baron of the exchequer, had not used the arms properly belonging to either the Carington or the Smith family, but a coat of a totally different description,"—as it most certainly was. This, however, is but half the truth. On investigation we discover that Sir John Smith, as "of Cressing", was actually *granted* a coat by Barker, Garter King of Arms (1536-1549), a fact which proves conclusively that he had *not* inherited, as alleged, from his grandfather, the cross and peacocks coat, but knew himself to be a *novus homo* with no hereditary right to arms.<sup>2</sup>

This discovery is the key to the whole heraldry of the family. On p. 79 Dr. Copinger quotes, as being flattering to the family, the words "a great

<sup>1</sup> Dr. Copinger actually gives the ludicrous blazon: "four peacocks, proper, between a cross of St. George" (p. 76)!

<sup>2</sup> See below for the blazon of this grant.

heiress " from a long footnote in the *Complete Peerage* of G.E.C. (II, 167), but is discreetly silent as to G.E.C's incredulous attitude therein towards the great Carington imposture. Dr. Copinger must also have learnt from that note that this scepticism is of old standing. For G.E.C. cites a significant criticism :—

The following note on this subject is in Vincent's handwriting in 'Vincent's Leicestershire', one of the MSS. in the College of Arms. " I cannot but feare this descent from which y<sup>e</sup> Smiths of Ashby Folvill and others of that name derive themselves ; because it is scarce known that, upon any occasion, both name and arms should be changed, and Sir John Smith, Knt., Baron of y<sup>e</sup> Exchequer gave first [as the armorial ensigns of his family] *Argent, on a chevron sable 6 fleurs-de-lis or ; on a chief, of the second, a lion passant of the first* <sup>1</sup> and then, after many years, y<sup>e</sup> issue of him gave [as such armorial ensigns] *y<sup>e</sup> cross, between 4 peacocks proper ;* and now they flye to Carrington *sed quo jure penitus ignoro.*

Dr. Copinger, therefore, cannot plead that the tale he accepts as unquestionably true is one which has never before aroused suspicion.

Starting from the sure ground of the grant to Sir John Smith, we can now enquire how it was that "after many years" (as the above MS. rightly says) his descendants claimed to bear the wholly different coat with the cross and peacocks. So far as I can find from Dr. Copinger's book, the earliest actual occurrence of this coat is on the monument to Sir Francis Smith (d. 3 Sept. 1606) at Wootton

<sup>1</sup> This is exactly the blazon given by Dr. Copinger, which suggests that this note must be his authority for it. For the blazons which will be given below differ from it, especially in giving *two* chevrons, which, indeed, appear on the Cressing monument, as stated by Dr. Copinger himself (p. 191) !

Wawen, Warwickshire. The allegation is that it was adopted by John "Carington," when he changed his name to Smith in 1404;<sup>1</sup> but not only is there no evidence that such arms were in use till a much later date; there is actual proof in the grant to Sir John Smith that his family did not possess these or any other arms at the time.

Dr. Copinger, however, asserts, without citing any authority, that when this "John de Caryngton for the purpose of concealing his identity in 1404 took the name of Smith," he

for the same reason changed his arms also; basing them with noble pride on the arms of his mother's family,<sup>2</sup> and because he esteemed that connection so very highly, he chose peacocks (the Roos crest) as the principal charge for his crest and arms, crest, a peacock's head proper—Arms, four peacocks proper, between a Cross of St George, to commemorate his descent from Michael de Caryngton, standard bearer to Richard Cœur de Lion in the third Crusade.

I express no opinion on the 'Cross of St. George' theory: it is held by G.E.C. that "an allusion to the descent from the Standard Bearer is *probably* made by the red cross on a white field in the arms and *certainly* in the grant of supporters [1643], the dexter of which is a man in armour supporting a standard (ensigned with the cross of St. George)."<sup>3</sup> If this was indeed the origin of the coat, it only

<sup>1</sup> See Burke's *Landed Gentry* and Dimock-Fletcher's *Leicestershire Pedigrees and Royal Descents*.

<sup>2</sup> This of course, is not so. His mother is alleged to have been a Roos, and the well-known arms of that family (derived from the Trusbuts, their ancestors) show the charge of three 'waterbougets' (trois bougettes) differenced by cadets in the interesting way of the days when heraldry was a living thing.

<sup>3</sup> This increases the difficulty of the heralds if they wish to dissociate themselves from any acceptance of the story (cf. pp. 144, 153 above.).

proves that the arms were invented with or after the invention of the standard-bearer in 'the great Carington imposture.'

When this new coat was invented, that which had been granted to Sir John Smith (the founder of the family) was supplanted and had to be disposed of. This was done in exactly the same way as in the case of the Spencer coat. In that case a coat had been granted to the family in 1504, but when their fabulous descent from the Despensers was invented, in or about 1595, a differenced Despencer coat was adopted and the new coat granted in 1504 was relegated to the second quarter.<sup>1</sup> By precisely the same device Henry Smith of Cressing relegated his grandfather's coat to the second quarter in the monument he erected at Cressing to his wife, who died 5 March '1607.'<sup>2</sup> In both cases the relegated coat was practically allowed to die out, and everything thus falls into place.

Even the spurious narrative, as cited by Dr. Copinger, does not mention the alleged assumption, in 1404, of the cross and peacocks coat, nor do I know how it came to be accepted by the heralds as the recognised arms of Sir John Smith's descendants. The present family of Smith-'Carington' has now relegated even this coat to the second quarter in order to usurp that of the Cheshire Caringtons in the first. Dr. Copinger, we have seen,<sup>3</sup> in his Introduction somewhat cumbrously endeavours to

<sup>1</sup> See my *Studies in Peerage and Family History*, pp. 289-293. And compare p. 16 above.

<sup>2</sup> See below.

<sup>3</sup> See p. 181 above,

justify this usurpation, claiming that their true name is "Carington alone, the Smith name having been assumed and being now retained as something the right to which has been acquired by long user, like as [!] are retained the arms of Smith" (p. 6). We have seen what Dr. Copinger imagined to be the English of the 15th century: let us here pause to admire what he believes to be the English of the 20th. Another inimitable sentence will be found on p. 518, where we read that "the rich heiress but poor creature, Alianore, must have twice been inflicted with twins"!

The adoption of the name of Smith for the purpose of concealing one's identity would hardly seem to require explanation: it occurred, as a matter of course, to the fugitive Louis Philippe. Dr. Copinger, however, gravely suggests an explanation gratifying, probably, to the supposed descendants of the alleged John. Though admitting that the name was "the best no doubt to adopt for the purpose of disguise," he adds that he "can well agree" with Mr. Chesterton's remarks in *Heretics* that—

"It would be very natural if a certain hauteur, a certain carriage of the head, a certain curl of the lip distinguished everyone whose name is Smith... Perhaps it does; I trust so. Whoever else are parvenus, the Smiths are not parvenus.

This is soothing, no doubt, to a Smith; and it suggests that his "certain hauteur" should become in a Smith-'Carington' an unapproachable altitude. But it is rather startling to be gravely told that

John Carington therefore adopted a name to which, according to the interpretation of the author of *Heretics*, the arms were peculiarly appropriate.

Mr. Chesterton is, we know, a master of brilliant paradox; no one is so competent to demolish such old-world beliefs as that two and two make four. But when he claims that the name of Smith justifies a haughty pride, he becomes 'Shavian' in his humour. Only Dr. Copinger, surely, would suggest that peacocks were "peculiarly appropriate" as the arms of John Smith!<sup>1</sup>

In his elaborate study and exposure of another ancient concoction—the Wellesbourne-Montfort story—Mr. Payne has observed that

The whole story is a pure fiction and deliberate fraud on posterity. It is the common case of members of a bourgeois family endeavouring to patch up for themselves a pedigree.<sup>2</sup>

His words apply to the story concocted for the Essex Smiths, and Dr. Copinger has cause to lay them sorrowfully to heart. The Wellesbournes, in their desperate and determined attempt to prove themselves descended in the male line from Simon de Montfort himself, went further than the Smiths. For they did not confine themselves to pedigree and arms, but forged deeds, forged seals, and forged family monuments in the very church itself.<sup>3</sup>

<sup>1</sup> We are told by him that "In some old coats peacocks 'in pride' are shown but the difficulty of blazoning (*sic*) properly the numerous eyes in each of the expanded tails led to their being depicted with tails 'close'". But the latter only is the charge in the Smith coat, which is against his theory that it was derived from the Roos crest.

<sup>2</sup> *Records of Bucks* (1896), VIII, 393.

<sup>3</sup> *Ibid.* pp. 362-412.

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For the benefit of those who may think that I have dwelt at excessive length on a document which affects only families of the name of Smith, I will now prove that this is not so, and that on the foundation of that spurious narrative which I have styled "the great Carington imposture" there has been built up, and accepted as genuine, at least one other great family history. In 1823 Sir Alexander Croke published, in two massive volumes, his *Genealogical history of the Croke Family, originally named Le Blount*. Like that of the Smith-'Carington' family, it claims not only a proved pedigree in the male line from the Conquest, but the actual male heirship of the Conquest ancestor. But it soars even higher. We read in Burke's *History of the Commoners* (1833) that

The surname of this family was originally *Le Blount*, and Sir Alexander Croke states that he is now the representative of the senior branch of that ancient house, which had its own origin from the *Blondi* or *Brondi* of Italy. Its patriarchs the *Counts of Guisnes* claimed alliance with most of the royal families of Europe, and counted amongst their progenitors the Emperors and Kings of France, the Kings of Denmark, the Counts of Flanders, and the Guelphs, Dukes of Bavaria (I, 355).

Nor was even this the limit of their antiquity; in an old edition of Burke's *Peerage* we read of this family that "its genealogy is deduced from the *Biondi* or *Blondi* of Italy, whose progenitors are known (*sic*) to have been the *Flavii* of ancient Rome"! One might on the same principle assert that their descendants are the English *blondes*.

"Sir Alexander," we "learn, was proud of the

antiquity and nobility of his ancestors".<sup>1</sup> He wrote of them as "an ancient and illustrious family, originally named Le Blount" whose "ancestors were Counts of Guisnes in Picardy, and derived their pedigree from Sigefrede a Danish prince, cousin to Canute the Great, who landed and took possession of that territory about the year 965."<sup>2</sup>

The whole pedigree, however, is built up on the assertion that a Nicholas Blount, in 1404, changed his name to Croke, when "John Carington" changed his to Smith, and for the same reason.<sup>3</sup> To support this assertion the 'Carington' narrative was adapted, as if its concoctor thought it too good to be wasted on a single family.

In an appendix to Sir Alexander's larger work (Vol. II, p. 810) this adapted narrative is given, as from a manuscript in possession of the family.<sup>4</sup> It begins with, practically, the same statement as that found in the Carington narrative :

John Carrington second son of Sir Thomas Carrington was brought up by Sir John Nevill in Gascony where he served Richard the second to twenty-five years of age, etc.

We then read of "Captain Blunt of Warwickshire" and find the English exiles named as "Carington, Atwick, Newborough, Lindsey, Fitz-William, Blont and other commanders." This differs slightly from the list in the spurious (Smith) narrative, which also speaks of "Richarde (*sic*) Blunte," though the exile's name was Nicholas

<sup>1</sup> *Thirteen psalms*, etc. (Percy Society), 1844, p. viii.

<sup>2</sup> *Ibid.* p. 51.

<sup>3</sup> *Ibid.* p. 52.

<sup>4</sup> It is also printed in *Thirteen psalms* etc.



according to the Croke pedigree.<sup>1</sup> And it is curious that in the Croke version it is not Robert Arden, but Robert Newborough, who accompanies Carrington to Besançon, dies there of a bruise, and leaves him his money. But the narratives give the same version of the exile's return and of the part played by the abbot. John Carrington, in the Croke version—

“ at length met with two fryers, come from England, who told Carrington that William, a younger son of Sir John Curson was an abbot. Now this abbot was a son of his father Carrington's elder sister, wife of Sir John Curson. But he and the rest, fearing to return, because Henry of Lancaster was cruel to all that had taken part against him.... further changed their names... John Carrington called himself Smith... and Blont changed his name to Croke, etc.

Finally, we read that Carrington, having landed near Ipswich,—

on the morrow rid to St. Neses, where he presented himself to the abbot, who had forgot him... however the abbot was glad to see him, and did privately keep him and bestowed on him mickle benefits, advanced him to wedlock and endowed him with fair lands.

This, it will be seen, is simply the story told in the mendacious narrative.

The Croke narrative, however, is no mere copy of it, for, apart from variations in names, and from giving the additional information that “ Fitzwilliams<sup>2</sup> made his name English and Blont changed his name to Croke,” it also adds the curious statement that

<sup>1</sup> Sir Alexander, accordingly, deemed ‘ Richard ’ an error for ‘ Nicholas. ’

<sup>2</sup> It describes him as “ Wm, Fitz-Williams, a younger son of John Williams of Emly, Ebor.”

Henry ye Fourth being dead, 1413, they boldly adventured abroad to see each other, and having procured their peace, they purchased lands....

Blont or Croke lived most in Bucks at a place called Essendon. His friends Carrington, and Fitzwilliams etc. visited him, and had mickle mirth together.

It would seem that the narrative in this form must be a modernised version.

The Crokes and the Smiths of Cressing had a curiously similar origin, each being founded by a successful lawyer in the days of Henry VIII, who made money and bought land. The respective grandsons of John Croke and of John Smith seem to have thought that it was time to claim a more ambitious pedigree : Smith discovered that he was a Carrington, and Croke that he was a Blount. I cannot but think it possible that in the latter case the name was suggested by the fact that Sir John Croke, speaker and justice of the King's Bench, married in the days of Queen Elizabeth a daughter of Sir Michael Blount of Maple Durham and wished to claim kinship with his wife's ancient house.<sup>1</sup> The marriage must have taken place somewhere about the time when the ' great Carrington imposture ' made its appearance.

I stated that the Croke descent from Blount has been " accepted as genuine " : it appears, indeed, to be unquestioned. In Burke's *Extinct Peerage* (1866) we read under Blount that from Nicholas Blount—

sprang the family of Croke *alias* Le Blount so distinguished in our legal annals, and the Crokes of Studley Priory, Oxfordshire, whose representative, the late Sir

<sup>1</sup> This, of course, is only a tentative suggestion.

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Alexander Croke, wrote a very able and elaborate *History of the Blounts*.

In Burke's *Landed Gentry* for 1894 it is set forth under Croke; and in Burke's *Peerage and Baronetage* it appears to this day under Blount. It has found its way both under Blount and under Croke into the *Dictionary of National Biography*, while the Duchess of Cleveland's *Battle Abbey Roll* (1889), which has much excellent genealogy, not only accepts the tale that Blount changed his name to Croke in 1404, to shelter himself from the vengeance of Henry IV. (I, 153), but even asserts of the name of Blount that :—

by a strange anomaly its actual representatives—the acknowledged heirs of its most ancient line—do not bear it. They are called by the name that was taken by their ancestor Nicholas in the reign of Henry IV, and remain to this day the Crokes of Studley in Oxfordshire.<sup>1</sup> (I, 156).

The cases of Carington and of Blount are thus closely similar.

The change of name in both cases rests on the same fictitious narrative and on that alone; and the two are grouped together by Fuller in his *Worthies*, under 'Surnames,' as instances of such changes in time of civil war. There is, however, this difference: the coat of the Smiths was, we have seen, entirely different to that of the Cheshire Caringtons; but the Croke coat is a Blount one, not, indeed, that of the Blounts of Mapledurham, but that (as stated in the Croke narrative) assigned to a Thomas Blount on more than one roll of arms.

<sup>1</sup> The place has been sold since then.

So much for one of the most elaborate and most impudent fictions which we owe to the countenance and authority of Elizabethan heralds. Of those which yet remain to be exposed a single instance may be given.

Just as a single forged document is advanced as proof that the Smiths were Caringtons with a pedigree running back to the Conquest, so the tale that the Beckwith family changed its name from that of Malebisse, borne by a Conquest house, rests, so far as I can find, on a single forged document. It can hardly fail to arouse suspicion when we read in "Burke's Landed Gentry"—where the pedigree like that of Smith-Carington, is accepted absolutely,—that

Sir Hercules Malebisse.... m. *circ.* 1226 the Lady Dame [*sic*] Beckwith dau. of Sir William Bruce, Lord of Uggelbarnby... and according to the agreement that he should change his name, or else his arms, adopted the former alternative.

For Hercules is a name as absurd for a man as Beckwith for a woman at the time of the alleged marriage; and if the husband had changed his name he would have taken that of his wife's family not her own Christian name! Moreover, on referring to a fuller pedigree,<sup>1</sup> we find it written "in the 'Ercles vein," for the bridegroom was son of another Hercules, whose mother was "a daughter of John, Lord Methley," a peer who must have flourished in the days of Stephen!

We seek, therefore, with some anxiety for the evidence which proves the change of name. The

<sup>1</sup> In Playfair's *Baronetage* I, App. p. x.

worthy Playfair, who apparently would have swallowed any statement that his patrons were good enough to put before him, has happily printed the crazy document which represents that proof. It appears to be intended to represent the record of a suit in the court of chivalry, and the forger was evidently unaware that, though in the later years of Queen Elizabeth's reign some such summons to attend an earl marshal's court might conceivably be issued,<sup>1</sup> it must, even if its form were possible, have proceeded from the Constable as well as the Marshal in the days of Edward III.<sup>2</sup> It would spoil so delightful a document to give it otherwise than in full.

Be it known to all nobles where this present writing shall come be seen or heard : whereas Hammond Beckwith Esq. son and heir of Nicholas Beckwith was warned by the earl marshal of England, by process, that was dated from the aforesaid earl-marshal's manor of Ryseing Castle, in the County of Norfolk, January 18th in the 13th year of the reign of our sovereign lord the king, in the year of Our Lord, 1339 ; that the said Hammond Beckwith should usurp, and take unto him, a coat of arms, which was appertaining unto John, Lord Malbie ; for which better use, by virtue of this process we charge you, that you will appear at the now mansion house, and manor of Saymor, before us, and bring with you all such evidence and records of arms, that we may allow, grant, and set our hands to your teste [*sic*] and posterity for ever. And also, that your appearance shall be the 14th day of October next coming in the aforesaid year above written.

And the said orator did appear at the said day appointed, and did bring with him such evidence ; whereof one

<sup>1</sup> See vol. I, p. 80.

<sup>2</sup> See vol. I, p. 79-80.

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piece, bearing date from the 10th year of Hen. III, which was in the year of Our Lord, 1226, from one Hercules Malbie, the third son of Sir Symon Malbie Knt. which married the Lady Dame [*sic*] Beckwith Bruce, one of the daughters of Sir William Bruce, lord of Uglebarnby, and certain lands in Pickering; that the said Hercules should change his name, or else his coat, and his posterity for ever; and so it was, that the said Hercules changed his name from Malbie to Beckwith, and did hold his coat;<sup>1</sup> whereof I, the said earl-marshal, Peter Mawlam, lord of de Luke [*sic*], lord chamberlain to our sovereign lord King Edward III, and Henry, Lord Percy, Sir Robert Boynton, Knt. and Sir William Acton did see and allow of it in due proof, and the aforesaid coat to be his own, lineally descended, whereof [*sic*] we have set our hands and seals to the aforesaid teste [*sic*], the day and year above written, in the presence of many.

It is hard to pick and choose among the decisive objections to this amazing document with its strong Elizabethan flavour.<sup>2</sup> But one may point out that the date of the summons, 18 Jan. 13 Edw. III, would represent the year 1340 (1339 by the then reckoning), and that the earl-marshal who issues it and who attests the result of the trial in the October following had died in 1338. The name of the witness by whom he is followed, "Peter Mawlam, Lord of de Luke," may be traced, perhaps, to a wild misreading of Peter 'de Malo Lacu,' i.e. de Mauley!

<sup>1</sup> This story seems to come from the same mint as the famous and persistent tale that Jocelyn, founder of the second line of Percys, "wedded this dame Agnes Percy upon condition that he should be called Jocelyn Percy, or els that he should bare the arms of the Lord Percy"; and he toke the counsell of his syster, and he chose rather to be called Jocelyn Percy than to forsake his own armes... for so shold he have no right title to his father's inheritance, and so of right the Lord Percy shold be Duke of Brabant, tho they be not so indede" (*Brenan's House of Percy* I, 14). For the utter falsity of this tale see my *Studies in Peerage and Family History*, pp. 41-2.

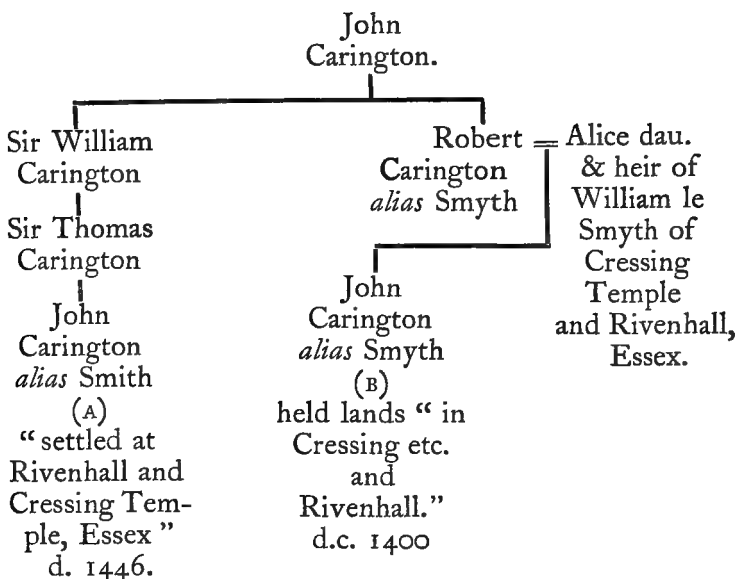
<sup>2</sup> Compare the Cecil document of 6 Edw. III alleged to record a similar transaction (p. 173 above).

More than enough has now been said to show that the document supposed to prove that a Malebisse changed his name to Beckwith<sup>1</sup> is a concoction even more absurd than that which proves, in Dr. Copinger's belief, that a Carington changed his name to Smith. This however did not prevent the late Victorian revival of Malebisse as a Christian name by the family or its use of the Malebisse arms.

It is a singular fact, and one which, I believe, was first brought to light by Dr. Copinger's book, that the perpetrators of this huge imposture had two strings to their bow: it is alleged that on two separate occasions Caringtons from Cheshire settled in Essex, and assumed, for different reasons, the same name of Smith! It is strange enough that even one should have done so; but that two did it implies surely that the pedigree-maker had two starters, and was not sure with which he should "declare to win."<sup>2</sup> Genealogically, these two assumptions by a Carington of the name of Smith work out thus in Dr. Copinger's pages:—

<sup>1</sup> Playfair gave as the chief authority for his account of the Beckwith family "the original pedigree done on vellum, and finely illuminated, which is now in the possession of Sir Roger Beckwith, Bart. and was entered in the visitation of Yorkshire April 9th 1666, at Doncaster, by Sir William Dugdale, Norroy King of Arms." Dugdale, certainly, seems to have allowed to the family, at the date named, the old feudal coat of Malbys (Argent, a chevron between 3 hinds' heads erased gules), undifferenced (*Genealogist* [N.S.] xvii, 120).

<sup>2</sup> It is a singular fact that, in what Mr. Payne termed the fourth phase of the great Wellesbourne imposture, the family were similarly uncertain whether Richard de Montfort assumed the name of Wellesbourne as a disguise on coming to live in retirement at High Wycombe or "married a lady named Wellesbourne and took her name and arms" (see p. 190 above).



My own explanation of this pedigree is that it represents two different attempts to derive the Smiths of Rivenhall and Cressing, at the period when they first emerge, from the Cheshire house of Carington.

But let us put my own views entirely out of the question: Dr. Copinger shall here tell his own story. And the story which he tells is a complete exposure, by himself, of his own methods, the more complete, because unconscious. Having lighted on several Essex fines in which a John Smith (or Smyth) figures, he asserts without hesitation that this was John Smith (B), and then, forgetting his own assertion, informs us with equal confidence, a few pages later, that it was John Smith (A)! Here are his own words:—



(A)

John Smith  
*alias* Carington  
 d. 1446.

"He was in 1411 party to a fine touching lands purchased in Feryng, Fordham, Kellvedon, Stistede, Boking, Magna Coggeshall and Parva Coggeshall; and to a fine upon lands in Branketre, Bokying and Felsted, co. Essex, levied at Westminster the same year, when he purchased from Richard Downham and Katherine his wife five messuages, four shops and fifty-six acres of land etc... in the aforesaid places; also in 1424 to a fine touching forty-eight acres of land and four acres of meadow etc., (p. 78).

(B)

John Smith  
*alias* Carington  
 d. circ. 1400.

"John Smith was party to a fine of lands in Boank-ehe (*sic*), Bokying, and Felsted, co. Essex, levied in 1411 (13 Hen. IV); and in 1414 he purchased from Richard de Downham and Katherine his wife 5 messuages, 4 shops, 56 acres of arable land etc... The said John was also party to a fine of lands etc. in Feryng, Fordham, Killeredon, etc.,... this last mentioned year.

John Smyth died in or about the year 1400, leaving a son Thomas who was one of the executors of his father's will. (p. 66).

The reader will at once be struck by the reckless inconsistency of making a man who is a party to fines in 1411 and 1414, die "in or about the year 1400." But the point on which I have to insist is this: here are three fines in which a "John Smith" (or Smyth) occurs; without the slightest hesitation Dr. Copinger identifies him on one page as John Smith (A) and on another as John Smith (B). This discovery destroys all confidence in his methods: for it proves that his identifications are made without proof.

As genealogical experts know, identification is

the *crux* on which a whole pedigree may turn ; and in the case of such a name as Smith, proof of identity is vital. To show that two men of the name of John Smith, or of Robert Smith or of Thomas Smith were living at the same time is absolutely no proof whatever that the two men were the same. Yet it is, I contend, in defiance of this elementary truth that the pedigree of the modern Smiths is represented as proved.

It is also by assuming, without proof, the identity of a Thomas Smith in Notts with a Thomas Smith in Essex, and of a John Smith in Notts with a John Smith in Essex that "practically conclusive" proof, as Dr. Copinger terms it, of the ancestry he now propounds for Lord Carrington is obtained.

This, however, anticipates a later stage of the enquiry.<sup>1</sup> Before approaching that stage we must deal with the middle period, the period of the (alleged) connecting link afforded by the Essex Smiths.

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### THE RISE OF THE ESSEX SMITHS.

The little "thoroughfare town" of Witham, on the great London road between Chelmsford and Colchester, gives its name to a small Hundred, which was sometimes styled, from its size, the "Half Hundred" of Witham. In this Hundred and adjacent to Witham, between it and Braintree, there lay a group of three parishes, Rivenhall,

<sup>1</sup> See p. 218 below.

Cressing and White Notley, which now become the scene of our story. Early in the 15th century we begin, in this group, to meet with a family of the name of Smith, who were small holders of land. One of the earliest records, if not the very first, in which we meet with a Smith who was certainly one of our line, is unknown to Dr. Copinger, as it also was, apparently, to the historian of Essex. It is an entry in the Hedingham feodary relating to Archers, a holding in Rivenhall. This was in the hands of "Thomas Smith" in 21 Hen. VI (1442-3) and also in 6 Edw. IV (1466-7). Another Thomas Smith did homage for it 2 April 1498,<sup>1</sup> and this was quite certainly the "Thomas Smith of Rivenhall in Com. Essex, Esquier" of the heralds' visitation, for the latter's son, Sir Clement Smith, was holding Archers at his death in 1551.<sup>2</sup> But this throws at once the very gravest doubt on the received pedigree of these Smiths, quite apart from the 'Carington' story. For this Thomas, of the heralds' visitation, is alleged to have been son of the John Smith (*né* Carington) of Rivenhall who died (we are told) in 1446. Yet this alleged son did not even do homage for 'Archers' till 1498, fifty-two years after his father's death! Moreover, we have to account for that earlier Thomas Smith, who was actually holding 'Archers,' we have seen, in

<sup>1</sup> "secundo die Aprilis anno Hen. VII. 13mo Thomas Smith de Rewenhale prestitit homagium suum Johanni tunc comiti Oxon pro terris suis in Rewenhale vocatis Archers."

<sup>2</sup> "Et super inquisitione capta in com. Essex 30 die Januarii anno 7 Edw. VI inventum est quod Clemens Smith, miles, obiit seisis de terris in Ryvenhale in dicto com. vocatis Archers tenement de comite per servicium dimidii feodi militis." Dr. Copinger cites the Inquisition at some length, but does not mention Archers.

1442-3, and 1466-7. It would seem, certainly, that he must have been the ancestor of these Essex Smiths. There is not adduced a scrap of proof that a John Smith was so; and even if he was, it is quite certain that he had never been a Carington.

The ancestor, however, from whom direct descent is claimed is a Hugh Smith said to have been<sup>1</sup> a younger brother of the above Thomas ("of Rivenhall in Com. Essex, Esquire") whose interesting will is preserved in the charter-chest of the Nevills of Holt and is printed in Dr. Copinger's book (pp. 97-8). It was proved 23 May 1486, and is dated the 12th of March previous.

Of this Hugh we read, as a preface to his will, that

Hugh Smith, "of Witham," and of Cressing Temple, son of John de Caryngton or Smith, was seised of the Manors of White Notley, Cressing, Cressing Temple, and half the Manor of Witham, with the advowsons of the Churches of Witham, Cressing, and White Notley, and lands in Rivenhall, all co. Essex.

This is impressive enough, but alas! we have only to turn to a county history of Essex to learn that Hugh was *not* seised of any of the manors named or of the advowsons either. It is only Dr. Copinger's picturesque manner. As for "half the manor of Witham," I had infinite trouble to discover what this might be. At last I realised that, the *Hundred* of Witham being sometimes spoken of as a "half Hundred," Dr. Copinger must first have altered this into something quite different, namely, half the Hundred of Witham; then have

<sup>1</sup> I do not challenge this statement.

altered "half the Hundred" into "half the *manor*"; and, finally, have quite erroneously, assigned its possession to Hugh. That, no doubt, is one way of writing family history.<sup>1</sup>

When we turn to the will itself, which immediately follows this statement, we find this alleged lord of manors and patron of advowsons giving himself away at the outset by desiring to be buried "in the Chirch yerde," a sure mark, at that time, of inferior social *status*. The testator, who makes bequests of single cows, was apparently a yeoman, well to do, for he could leave his daughters, as a marriage portion, £10 cash, and to his son, on coming of age, £6.13.4. a year in land. My conclusion as to his *status* is confirmed by two contemporary deeds unknown to Dr. Copinger. The first is of 8 April 1465 and is a feoffment to a knight, two "esquires," one "gentilman," and "Hugh Smyth and Edmond Moone<sup>2</sup> of Witham"<sup>3</sup> and the second, *temp.* Henry VII, relating to this feoffment, speaks of him as then deceased. It is clear from this evidence that Hugh could not claim even the lesser style of "gentilman."

<sup>1</sup> It illustrates Dr. Copinger's almost incredible confusion, that on p. 496 he himself makes Hugh Smith die "seised" of the manors of "Cressing, Cressing Temple, White Notley, and half hundred (*sic*) of Witham" (thus giving the right form), while, only two pages earlier (p. 494), he definitely states of the manor of Witham that "this lordship and half-hundred continued in the possession of the Templars, and afterwards of the Knights Hospitallers ....till.....1540," so that Hugh Smith cannot have died seised of either of them in 1486. Thus his own words prove that my criticism is just. Hugh did *not* possess these manors, and, even if he had done, he would have held the half *Hundred* of Witham, not "half the manor" thereof.

<sup>2</sup> A witness to Hugh's will as "Edmond Moone" and possibly his brother-in-law; he is in the spurious narrative, "Mr. Mone of Revenhall." Dr. Copinger's chart pedigree converts the name into "Moigne" and adds, without hesitation, "five of whose ancestors held the manor of Easton, co. Essex, by the serjeanty of being the King's Lardner at his Coronation" !

<sup>3</sup> Ancient Deed, A. 7737 (P. R. O.)

His son was the real founder of the family, and the means by which he founded it was the law. Sir John Smith (as he became) was a typical Tudor upstart, rising by the law, acquiring land on the dissolution of the religious houses,<sup>1</sup> and prudently marrying, in the first instance, one of the daughters and heiresses of a London grocer. He acquired the manor of Cressing Temple and the half-hundred of Witham, which had belonged to the order of the Hospital, in July 1541, and Cressing became his seat or, at least, that of his descendants. Anxious to exalt the alleged ancestors of "the Smith-Carington family," Dr. Copinger writes:—

We find, however, that the manors of Cressing, Cressing Temple, White Notley, and half-hundred of Witham belonged much earlier to the Smith family, and Hugh Smith, 3rd son of John Carington, died seised of these manors. His will is dated the 12 March 1486. These estates passed to his son Sir John Smith (p. 496).

"We find" this only in Dr. Copinger's statement to that effect, which is, as I have said, at direct variance with the known history of these manors, all of which is in print. I am compelled to insist upon the point, because it proves that we

<sup>1</sup> Editing the will of his cousin, John Smith of Blackmore, Mr. King observed: "The family appear to have largely augmented their possessions out of the plunder of abbey lands. The Smyths of Cressing held the estate there of the Knights Hospitallers; Clement Smyth, brother of the testator, acquired monastic property in Coggeshall. John Smyth was one of the auditors of King Hen. VIII, and to him that monarch granted the manor and site of the Priory of Blackmore in 1540." (*Essex. Arch. Trans.* [O. S.] III. 55). It is not strange that he desired his sons to follow in his footsteps, and provided by his will that they should "lerne the laws of this realme, or wyth some auditores, or in some other office towards the lawe, whereby they may be better hable to live honestly according to the lawes of God." The family also took monastic lands on lease, which complicates their holdings.

cannot accept his unsupported statements in this book, until they have been duly verified.

So unconscious was Sir John Smith of the pedigree subsequently found for him that, as I have said, he duly obtained a brand-new coat of arms<sup>1</sup> as "John Smyth de Cressing." Indeed it was one of those complicated coats which Garter Barker loved to grant, and which stamped their bearers somewhat vividly as men newly risen.<sup>2</sup> Papworth blazons the grant as—

Argent, on two chevrons sable six fleurs de lis or ; a chief azure charged with a lion passant or oppressed on the shoulder by a lozenge gules.<sup>3</sup>

As Barker was Garter from 1536 to 1549, while Sir John Smith died in the same year as his sovereign, King Henry VIII (1547) we obtain a date-limit for the grant. In the old church of Witham, on Cheping Hill, there was formerly to be seen his funeral furniture, "coat, pennon, helm, crest, sword, target, and standard"; and the coat shown is given as:—

Argent, two chevrons azure, each charged with a fleur-de-lis or, and on a chief of the second [azure] a lion passant gardant of the third [or].<sup>4</sup>

The crest was "a cubit arm habited azure, ruffle argent, holding in the hand proper two

<sup>1</sup> See p. 185 above.

<sup>2</sup> See Mr. Stephen Tucker's paper on "Variations in the Petre Arms" in *Arch. Journal* XXXIII, 335-341. And compare Fuller's *Worthies*:—"Such coats were frequently given by the heralds, not out of want of wit, but will to bestow better, to the new gentry in the end of the reign of King Henry the Eighth."

<sup>3</sup> Barker's grant is tricked in Harl. MS. 5846 (fo. 755, old numbering ; 297 b, new). The coat described as in Witham church differs somewhat from that in the text, and so does Vincent's blazon, referred to below.

<sup>4</sup> Harl. MSS. 4944 ; 1541 (cited in *Essex Arch. Trans.* [N. S.] IV, 108.)

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arrows or.”<sup>1</sup> This crest was as new and as distinctive as the coat.

Possibly, if the family had not increased their possessions, they might have remained content with these armorial bearings. But they had a perfect gift for marrying heiresses. Sir John's uncle had married the heiress of Tofts in Little Baddow,<sup>2</sup> and from his two sons descended the Essex families of Smith of Baddow and Smith of Blackmore. Sir John himself married for his second wife a Warwickshire heiress, and the son of this marriage, inheriting her property at Wootton Wawen, himself married the heiress of Ashby Folville and was ancestor of the first Lord Carington of Wootton Wawen, so created in 1643. Sir John's son by his first wife, one of the heiresses of a London grocer, married the heiress of the Leicestershire house of Nevill of Holt, and thus founded the family of “Smith *alias* Nevill.” In Witham church is the monument to this Nevill heiress and her second husband a Hervey of Ickworth, with the quaint statement that, after the death of her first husband she “continued and kept house in worshipful estate and credit at Cressing Temple in

<sup>1</sup> Ibid.

<sup>2</sup> This was an important match in the early history of the family. Dr. Copinger takes it upon himself to assail (p. 263) the 1664-8 Visitation of Essex, but only succeeds in illustrating thereby his own extraordinary confusion. That visitation assigns to Smith of Blackmore a coat of nine quarterings, of which we have “(8) Toft (9) Turner.” Dr. Copinger first reads this as “Toft of Turner” (!) and then explains that Smith of Blackmore “was not entitled to quarter the arms of Toft of (*sic*) Turner;” for “Agnes, daughter of William de Toft, was it is true in the line of descent, being the wife of the father of the last mentioned William de Carington, but she unfortunately was not an heiress.” The arms quartered had nothing to do with any ‘Carington’ alliance; they were those of the old Essex family of Toft, who gave their name to Tofts, and whose heiress, Isabella, as shown in his own book (p. 512), brought that manor in marriage to Thomas Smith. Her arms would be naturally quartered by their descendants.



y<sup>e</sup> County of Essex the space of 27 yeares” and died in 1592. Her son Henry, by her Smith husband, erected in Cressing church that important monument to his wife to which we are now coming.

It will be seen that by the close of the 16th century this spreading family had already four branches, two of them established at Little Baddow and Blackmore, in Essex, respectively; a third at Cressing in Essex and Holt in Leicestershire; and a fourth in Warwickshire. Hence we find their pedigree entered in the Essex Visitation of 1612, the Leicestershire Visitation of 1619, and the Warwickshire Visitation of 1619 also.

I now turn to their monuments, of which two are of consequence for my purpose. One of them is that at Cressing, of which I have spoken above; the other is that erected at Wootton Wawen to Sir John's son, Francis Smith, who died in 1606, a year and a half before his nephew's wife whom the Cressing monument commemorates. Both of them are florid heraldic structures; but in neither of them is any trace of the name or arms of Carington. This is the more noteworthy because on the Cressing monument Henry Smith is eloquent on the subject of his wife's family “*qui ex antiqua illa et vere nobili familia de Nevill de Rabi (unde et prosapia Comitum de Westm'lande ortum ducunt).*” But he simply styles himself “*filio et heredi Thomæ Smith armigeri.*”

One change, however, had been made. The monuments at Cressing and at Wootton Wawen prove that Sir John Smith's coat and crest had

already been discarded by his family, who had adopted what they may have thought a much nicer one: "Argent a cross gules between 4 peacocks close, azure," with a peacock's head for crest.

Now at this period there was a dodge, a dodge which Mr. Tucker, a professional herald, deemed sound heraldry,<sup>1</sup> by which these changes could be made to assume quite a distinguished character.

When the house of Spencer first aspired to armorial bearings, it received a brand-new coat of arms with seamews' heads as a charge. But when an obliging King of arms discovered for it, as it rose in wealth, that it was really sprung from the great house of Despencer, and allowed it a differenced Despencer coat, which it still bears, the sea-mews coat was relegated to the second quarter and vaguely described as "Spencer ancient."<sup>2</sup> So, on the Cressing Temple monument we find Sir John Smith's coat relegated to the second quarter, and thus actually providing the family with an additional quartering!<sup>3</sup>

But in the meanwhile there had begun a far grander development. Henry Smith of Cressing, who erected this monument, appears to have exhibited to two heralds Dethick, Garter, and Cooke, Clarenceux—who, although they denoun-

<sup>1</sup> "I apprehend that he (Lord Petre) might, if he chose, use the coat of Sir William Petre as the first of his quarterings after his simplified shield" (*Arch. Journ.* XXXIII, 310). That is to say, the true and original Petre coat would be relegated to the second quarter, the first, or place of honour, containing the nicer one, which the family had preferred.

<sup>2</sup> See my *Studies in Peerage and Family History*, pp. 292-5, 300, 307, and compare my remarks on the Temple coat (p. 16 above).

<sup>3</sup> Sir John's coat on this monument is blazoned in Chancellor's 'Sepulchral monuments of Essex' (p. 357) as "Argent, on two chevrons sable six fleurs-de-lis of the field, 3 and 3; on a chief azure a lion passant gardant of the first." Dr. Copinger repeats this blazon (p. 191), apparently quite unconscious of its conflict with that which he had adopted (p. 185 above).

ced one another's iniquities, were on this occasion acting together,—probably between 1590 and 1592, “an antient manuscript,” containing what I have described as the spurious narrative, which they seem to have accepted. Such, at least, is Dugdale's statement,<sup>1</sup> which appears to be supported by the fact that the narrative, in a 16th cent. MS., has been found in the charter chest of Henry's heirs, the Nevills of Holt.<sup>2</sup> On the other hand, there is the formal statement of Rougedragon (W. Smith) that the head of the family, Sir John Smith (of Little Baddow), had shown “two ancient writings” (containing the narrative) to Cooke, Clarenceux, who had thereupon certified the pedigree in 1577.<sup>3</sup> There is some doubt, therefore, as to when and by whom the tale was first started, although, as we have seen, both accounts connect its first appearance with Cooke, Clarenceux King of Arms.

It is, however, a notable fact that neither the name nor the arms of Carrington were as yet adopted by the family, in spite of this recognition. Their earliest use of the name that I can find in Dr. Copinger's book is afforded by an entry in the Diary of the English College at Rome, where a younger son of the Ashby Folville line made this

<sup>1</sup> In his Warwickshire (p. 570) he says; “I may not omit here to mention what I have seen attested by Sir William Dethick sometime Garter principall King of Arms and Robert Cooke Clarenceux... from the credit of an antient Manuscript (penes Henry Smith de Cressing Temple).”

<sup>2</sup> See p. 148 above.

<sup>3</sup> In Harl. MS. 1500, fos. 102-3, we have his statement that “This pedigree is warrented by an historical Pedegree engrossed in velym under the hand of Robert Cook (als. Clarenceux) King of Armes, agreeing verbatim with two ancient writings shewed unto him by S<sup>r</sup> John Smith of Essex with whom they are now remayning.” This was written in 1602 when this notable old warrior was still living.

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statement in the year 1600: "My name is John Smyth alias Carington; my father's name is George Smyth" etc. (p. 248). Even when Sir Charles Smith was raised to the peerage as Lord "Carrington" in 1643, he did not alter his surname. That the 'Carington' descent was still looked upon, in some quarters, with suspicion, is shown by the extract from Vincent's "Leicestershire," a MS. in the College of Arms, printed in the *Complete Peerage*, II, 117.

I cannot but feare this descent from which y<sup>e</sup> Smiths of Ashby Folville and others of that name derive themselves; because it is scarce known that, upon any occasion, both name and arms should be changed, and Sir John Smith, Knt., Baron of y<sup>e</sup> Exchequer, gave first "Argent, on a chevron, sable, 6 fleurs-de-lis, or; on a chief of the second a lion passant of the first and then, after many years, y<sup>e</sup> issue of him gave "y<sup>e</sup> cross between 4 peacocks, proper", and now they flye to Carrington, *sed quo jure penitus ignoro. Ex libro Thomæ Baronis Brudenell*<sup>1</sup> anno 1641.

Dugdale, with similar caution, dealt thus tersely with the story in the second volume of his *Baronage* (1676):—

This family do derive themselves from Sir Michael Carington, knight, Standard bearer to King Richard the First in the Holy Land.

The use, however, of an *alias* was already creeping in; the last lord Carrington had been married in 1657 as "Charles Carington *alias* Smith," and his

<sup>1</sup> Lord Brudenell's aunt, Elizabeth Brudenell, had married, as his 2nd wife, Francis Smith of Wootton Wawen, whose monument shows the cross and peacocks coat. Dr Copinger styles her (p. 175) "eldest daughter of Sir Thomas Brudenell, knt., of Dean, Northants, and Gains Park, Essex." But Gains Park never belonged to the Brudenells.

cousin Francis, somewhat later, used the same double style.<sup>1</sup> But for the extinction of their line further developments might have followed.

The last lord Carrington (of the first creation) died in 1706, and, on the death of Francis Smith *alias* Carington, of this line, in 1749, there was an end of the house. Subsequent topographical and genealogical writers treated the entire family as extinct.<sup>2</sup>

Neither in Essex nor in the Midlands was there known any family descended in the male line from the old Essex Smiths of Tudor days.<sup>3</sup>

### LORD CARRINGTON'S ANCESTRY

As I explained at the outset, the family of Smith-‘Carington’ is entirely distinct from that family of Smith of which Lord Carrington’s branch has adopted the surname of Carrington (afterwards changed to ‘Carington’). Dr. Copinger insists on deriving them both from a common ancestor, Sir John Smith of Essex, Baron of the Exchequer *temp.* Henry VIII, through two of his sons. And Sir John he derives from the Caringtons through ‘the great Carington imposture.’

In neither case can he produce any *proof* of this descent, and it is a singular fact that the ancestors of both families appear to have been living in the

<sup>1</sup> From his daughter and heiress descends the old Essex Family of Wright of Kelvedon Hatch.

<sup>2</sup> See, for instance, the pedigree in *Nichols’ History of Leicestershire*.

<sup>3</sup> The Blackmore line had come to an end even before their kinsmen in the Midlands.

parish of St. Mary's, Nottingham, at the close of the 17th century. This, I hasten to add, may have been mere coincidence ; but there is no reason to suppose that either family was of other than local origin. The district, we shall find, swarmed with Smiths.

In the case of Lord Carington's family there is no longer any occasion to demolish its descent from the old Essex house. The task has already been performed by one of its own members, the late Augustus Smith, M.P., of Tresco Abbey, who, in 1861, issued

A true and faithful history of the Family of Smith originally cradled at Wiverton and Cropwell Butler in the Parish of Titheby and more recently established at Nottingham.

This modest book, in strange contrast with his own colossal production, has evidently proved to Dr. Copinger a source of great annoyance. Indeed he has allowed his irritation to find vent at the outset by scornfully writing :—

The absurdity of the pedigree manufactured by the late Mr. Augustus Smith M.P. is too apparent to need serious refutation.

This is tolerably strong language, stronger language than he would like to see applied to his own performance.

Mr. Smith's real offence appears to have been his insistence on the fact that

the ancestor of the Smiths of Cropwell Butler is undoubtedly found in a humble yeoman of that village... This race was altogether plebeian in its source.

Such an admission, not unnaturally, is most annoying to Dr. Copinger, who insists on claiming for Lord Carrington the honour of being a cadet of "the Smith-Carrington family."

And what makes it the more annoying is that he cannot deny that Mr. Smith successfully demolished the descent which had been set up for his family. With horrible honesty he wrote thus:—

Before the humble course of the true Smith stream is pursued, it may be as well to show for once and for ever that the yeoman and blacksmith family of Titheby and that derived from the Exchequer baron by the grocer's daughter, never in any way had any relationship.

He denounces also—

the inquiries of imaginative genealogists, whose disposition is as prone to romance as those who have indulged and attempted to establish the fiction that these Titheby Smiths had branched from a noble family who were sometimes known as Smiths and sometimes as Carringtons... whose honours and even name in one instance the sturdier race has presumed to usurp.

This scathing allusion to his own relatives refers, of course, to the selection by Robert Smith, the banker, of 'Carrington' as his peerage title, and to the direction in his will that his son should change his name to 'Carrington' from Smith, which was accordingly done in 1839.<sup>1</sup>

Wraxall makes an interesting allusion to Robert Smith's peerage:—<sup>2</sup>

<sup>1</sup> It is of this change that The *Complete Peerage* somewhat severely observes: "This direction was doubtless a final (indeed posthumous) effort to give an additional appearance of a descent (palpably untenable) from the 'gentle' family of 'Smith *alias* Carrington,' whose title of peerage had already been acquired" (II, 169).

<sup>2</sup> *Posthumous Memoirs*, I. 66-8.

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Towards the year 1790, Mr. Smith removed his residence [from Lombard Street] to the vicinity of St. James', where he occupied a splendid house looking into the Green Park. He still represented his native place, Nottingham; and, adhering invariably to the minister, was raised, in 1796, to the Irish peerage, by the title of Lord Carrington. Scarcely fifteen months afterwards Pitt placed him on the barons' bench in the British house of peers, by the same title; not however, as was well known, without experiencing a long resistance on the part of the King.<sup>1</sup> Throughout his whole reign, George the Third adopted as a fixed principle that no individual engaged in trade, however ample might be his nominal fortune, should be created a British peer. Nor do I believe that in the course of fifty years he infringed or violated this rule, except in the single instance before us.

I believe that he [Mr. Smith] claimed a collateral alliance with the family of the same name, one of whom was ennobled by Charles the First under the title of Carrington, an English barony which expired under Queen Anne early in the last century. Whether the fact be so or not, I have been told that Pitt intended to raise his friend a step higher in the Red Book; and that, when his administration suddenly terminated in 1801, Lord Carrington was on the point of being created Viscount Wendover<sup>2</sup>....

The collateral connexion referred to by Wraxall, when the title was originally obtained, was traced through John Smith of Cropwell Butler, who d. in 1641, and who was claimed as a younger son of George Smith of Ashby Folville. In the words of Mr. Augustus Smith,—

<sup>1</sup> This interesting and definite statement is categorically denied in the *Quarterly Review* (1836), CXIV, 457, "from the authority of Mr. Pitt himself." But Wraxall did, at least, good service in insisting on the vastly lower *status* of an Irish, compared with a British, Peerage, when conferred on an Englishman, a fact now generally forgotten.

<sup>2</sup> This title, with an *earldom* of Carrington, was added to the barony in 1895.



This is the John Smith who, by the authority of the late Sir William Betham, Ulster King-at-arms, with the poetical turn so prevalent among the sons of Hibernia, was forcibly engrafted on the ancient line of the Smith-Carringtons <sup>1</sup> in the person of a John Smith, who was the fifth son of George Smith of Ashby Folville,... a most unfortunate hypothesis...

Dr. Copinger has to admit that the Ashby Folville cadet "had died 16 years too early to afford the needful connexion" (p. 3).

Accordingly, Mr. Smith scoffed at the attempt of the present [1861] Lord Carrington to engraft himself on the parent stock, to countenance which he has obtained leave to take the name of Carington (*sic*) by sign manual.

And he further betrays the fact that—

the present [1861] Lord Carrington, it appears, has recently purchased the burial chancel of the former owners of Ashby Folville, and repaired and restored their monuments, doubtless as a sort of apologetic compliment and propitiatory offering as the bearer of their title and borrower of the peacock plumage which adorned their coat of arms.

We thus learn that the family monuments of the Ashby Folville Smiths were taken in hand by one of the families that sought to claim descent from them long before the other family had appeared upon the scene. Indeed it doubtless adds to the guilt of Mr. Augustus Smith that he was blissfully ignorant of the claim of that other family, the Worcester nurseryman being known as yet in that capacity only, and not having then revealed himself to the world as the heir male of the body of a

<sup>1</sup> i. e. The old Leicestershire house of Smith.

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Conquest 'Carington' or as the descendant of Norman dukes.<sup>1</sup>

*Uno avulso non deficit alter.* Lord Carrington's claim, exposed by his kinsman, had to be and was dropped, and a straightforward and unexceptionable pedigree has long appeared in the peerage-books. But, before long, Mr. Smith-*'Carington'* was looking out, in turn, for ancestral monuments to restore. And at Blackmore (1879) and Wootton Wawen (1882) he found them.<sup>2</sup>

But the point on which attention should be fixed is what Dr. Copinger himself terms "the unhappy guess of Berry and Sir William Betham" that John Smith, Lord Carington's ancestor (who d. 1641), was identical with another John Smith, a cadet of the house of Ashby Folville. For this is an admission, firstly, that the alleged identity was a "guess," and secondly, that on this "guess" alone rested the pedigree authorised by Betham, Ulster King of Arms. When we analyse the new descent which Dr. Copinger now, with so much confidence, puts forward (pp. 2 & 5), we find that its identification of John Smith, the ancestor, with a John Smith named in an Essex will is every whit as much a "guess" as that which was made by Betham and Berry.

He claims indeed that "the documents and registers, of which we give copies, are practically conclusive as to the descent" he advances, but all, we find, they prove is that Lord Carrington's ancestor, John Smith, yeoman, bought some land

<sup>1</sup> He did not assume "the name of Carington by Deed Poll" till 1878.

<sup>2</sup> See Dr. Copinger's book, pp. 112, 125, 508.

in Cropwell Butler, Notts, 24 October 1622 (p. 252), and that William Smith of East Mersea, Essex, had a son John, who proved his will as executor 11 April 1622 (p. 222), but for the date of whose birth ("between 1595 and 1600") not a shred of evidence is produced. Absolutely no proof whatever is given for the identity of these two men.

Even with the tribe of Nottinghamshire Smiths, in the midst of whom the ancestor is found,

with so common a name as Smith, particularly where the Christian names are equally common, it is a matter of very great difficulty to trace the exact relationship in individuals.

So, most justly, wrote Mr. Augustus Smith. When Dr. Copinger boldly asserts that

No professional genealogist would for a moment accept Mr. Augustus Smith's conclusions as sound, etc.—one is reminded that Berry and Betham were both professional genealogists, and that they no doubt like Dr. Copinger,<sup>1</sup> might prefer to solve problems of identity by a "guess."

If a spurious pedigree was invented for Lord Carrington's family, their arms at least were above reproach. Of his ancestor Thomas Smith Mr. Smith proudly wrote that he bore "a coat of arms, filched from no other Smith, but his own by grant from the Heralds' College." It was, he claimed, "in keeping with the honest character of the man" that he stated when applying for this grant (in 1717) that he "was uncertain what arms did rightly

<sup>1</sup> See p. 201 above for conclusive proof of Dr. Copinger's method.

belong to his name and family, and that he was unwilling to bear any to which he had not a just title." The coat which he was granted was based, not on any Smith arms, but on that of his mother's family, the Collins of Nottingham, woolcombers, to whom they had been granted so recently as 1712.

Dr. Copinger waxes wroth with Mr. Smith for claiming, on the strength of this, that his ancestor knew himself to have no hereditary right to arms, and insists that, on the contrary, the form of his application shows that he was only "uncertain whether he should bear the arms of Carington or Smith." But, alas! Dr. Copinger is clearly unaware that its wording was merely "common form"; and the fact that the coat actually granted was that neither of Smith nor of Carington, but one totally different, is so obviously destructive of Dr. Copinger's contention that one can only wonder how he came to advance it.

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### THE SMITH-CARINGTON DESCENT

The claim of Lord Carrington's family to descent from the Essex Smiths and, through them, from the Cheshire Caringtons, has been, as I have said, frankly abandoned since its exposure by one of themselves, in 1861, though its memory, of course, was made indelible by the London banker's choice of his title in 1796. The idea, probably, was not his own, but proceeded from some unscrupulous genealogist with Betham to aid and abet him.

But in Burke's *History of the Commoners*, which belongs to a deplorable period,—a period exceptionally rich in genealogical fable,—the descent duly appears, supported by the daring statement that Gaddesby had been inherited from the Smiths of Ashby Folville.<sup>1</sup> In the same obliging work a Colonel Carrington Smith, of St. Margaret's, Glouc., was definitely derived, through the Essex Smiths, from Sir Michael, the inevitable standard-bearer, with the added information that "he claims the ancient Barony of Carington"<sup>2</sup>—whatever that might be.

But of the one remaining claim nothing was as yet known. The seeds, however, had been sown which were destined, in the fulness of time, to bear their gorgeous fruit. Within a few months—or weeks—of the issue of Dr. Copinger's mighty tome there appeared, in the *Daily Mail*, a slender half-column in strange contrast to the *History and Records of the Smith-Carrington Family from the Conquest to the present time*. In the midst of a page devoted to the merits of such things as soap and vinegar and beer, as produced by certain firms, we find the simple annals of that house's origin and rise. Not, indeed, that the careless reader would imagine the two histories to be those of the same house. For the sketch given us under the heading of "Richard Smith & Co."<sup>3</sup> contains facts for which we seek in vain in the monumental *History*, while the glories enshrined in the latter work

<sup>1</sup> Vol. I. (1833), p. 98.

<sup>2</sup> Vol. IV. (1838), p. 740.

<sup>3</sup> *Daily Mail*, October 18, 1907. p. 3.

appear to have been all unknown to the writer of that simple sketch.

But on a careful reader there might dawn the fact that certain "nurseries" at Worcester have played a more important part in the rise of this "ancient house" than the exploits even of Sir Michael Carington, as he waved his sovereign's banner on the blood-stained fields of Palestine.

These simple annals begin, early in the last century, with a certain Richard Smith, whose career Dr. Copinger treats with a somewhat strange terseness (p. 359), in striking contrast with the loving care he bestows on Sir Michael's life. But Richard Smith had the disadvantage of being a real man. From "the record of a century's progress," as these annals are entitled, we learn that "his financial resources were meagre," and that—in the county we associate with the name of Mr. Jesse Collings—he started in life with "four acres"—and no cow! For he was a nursery gardener. On the subject of the rise of the family through his successful career Dr. Copinger is silent.

It was his son and namesake "who with untold enthusiasm," in the touching words of Dr. Copinger's dedication, "devoted the leisure hours of a busy life to tracing the ancestry of his ancient house," and "collected with indefatigable energy the material from which" Dr. Copinger's volume, "embodying the fruit of his labours, has been compiled." The result was seen in his restoration of an ancestral monument to a Smith at Blackmore, Essex, as early as 1876 or 1879,<sup>1</sup> in his assumption

<sup>1</sup> Dr. Copinger *more suo* gives both dates (pp. III-2, 508).

by deed-poll, in 1878, of the additional surname of "Carington," and, above all, in the subsequent development of his pedigree in the "Landed Gentry."

In the 1886 edition of that work we read only that "several families claim descent from" the Essex Smiths "who are stated to have changed their surname" from Carington—an unimpeachable remark, and that among them Mr. Richard Smith—"Carington" claims such descent, though "his immediate ancestor" was a Beeston Baptist who had died in 1795. But by 1894 this guarded statement had been cast to the winds. His brief pedigree had been replaced by one which had already found its way, elsewhere, into print.<sup>1</sup> To the splendid pedigree of the Okeovers of Okeover, a great county family, the so-called "Landed Gentry" could only devote a column: to that of Smith-'Carington' it devoted nearly four. At its head, of course, is Sir "Mychell" the glorious, "6th in descent from Hamo, Lord of Carinton, co. Chester, *temp.* William I." By an even further development, four years later (1898), the "Landed Gentry" was able to announce that "the descent is recorded in the Heralds' college in an unbroken line for over 700 years."

For the pedigree as well as for the nurseries it had proved "a century of progress."

Let us then examine the evidence for this astounding pedigree from "the Conquest." Nearly half of it, we saw, is swept away at once by the

<sup>1</sup> In Dimock-Fletcher's *Leicestershire pedigrees and Royal descents*, 1886, Mr. Smith-'Carington' appears as a subscriber for 6 copies of this work).

proof that the whole of the "Carington" descent rests upon a forged document, "the great Carington imposture." There remains the descent from the Essex Smiths, a family of Tudor rise. Is Dr. Copinger successful in proving even this descent, which he claims as "fully verified"?

But why, it may be said, ask for proof when there is the evidence, the indisputable evidence, of physiognomy? According to Dr. Copinger,—

Mr. James Walter, in his charming and beautiful work, "Shakespeare's true life" (p. 145)..... says of the late Mr. Richard Smith-Carington: "Dugdale with his reliable correctness shows how closely the Harewell, Smith, and Carington families have been bound up with these manors (that is, Wootten Wawen, Shottery, etc), though even this testimony of our greatest of olden topographers is not needed to impress a fact which the grand old church of Wootten Wawen so indisputably proclaims in the remarkable resemblance of the present Richard Smith-Carington, of St. Cloud, Worcester to the recumbent effigy on one of the grand old monuments in Wootten Wawen church" (p. 365).

The "charming and beautiful" style of those somewhat gushing gentlemen who write of "olden" topographers and of "grand old" monuments in "grand old" churches, does not inspire, I fear, confidence in their critical judgment. As for the "recumbent effigy," we are not told if it is that which is depicted and described on pp. 527-8 of Dr. Copinger's book, and there assigned to a John Harewell, who died so far back as 1428, or that of Francis Smith, who died more than three centuries ago.

In either case it is a long period for the preser-



vation or revival of this "remarkable resemblance."

But those whose eyes are quick to detect such resemblances have achieved even greater feats. Mr. Bain, a learned Scottish antiquary, called attention to an article on "Nights and days with de Quincey," which appeared in *Harper's Magazine* Feb. 1890, and in which, under "Family Resemblances," we read :—

On one of my visits to the Houses of Parliament, whilst passing through one of the corridors, I was startled by the features of a figure quite unknown to me. The thought flashed, how strikingly the face resembles Miss Florence de Quincey !..... On reading the inscription, I found that the figure was actually that of her ancestor, Saher de Quincey, Earl of Winchester.

When I returned to Edinburgh, I reported to de Quincey this singular resemblance of the effigy of the old earl to his daughter over a gap of some five (*sic*) centuries. <sup>1</sup>

Mr. Bain, naturally, proceeds to ask :—"How can a resemblance between a lady of the nineteenth century and a fancy portrait of a baron of the thirteenth prove their relationship ?"

He further reminds us "how rootedly the belief lingers in this country that persons who bear a similar surname are all descended from a common ancestor, than which there can be no greater delusion." He points out that it led "De" Quincey to add that prefix to his name, "as the descendant of a Magna Charta baron, to which he appears not to have had a vestige of claim, if records can be trusted." As he justly adds :—

<sup>1</sup> It was, of course, more than that. The earl died in 1219.

People who prefer fact to fiction are not disposed to allow loose assertions founded on fancied resemblances, hearsay reports, and the like, of descent..... to be gravely stated in the pages of well known publications, without challenge. <sup>1</sup>

The worthlessness of "fancied resemblances" is the point on which I would insist.

Of this I lately noted an instance so amusing that no apology is needed for citing so good an illustration. In a Parliamentary sketch the writer pictured for us :

the handsome cavalier face, with its white-pointed beard and strong features, of Mr. Verney. A cavalier he is by instinct and tradition, as well as in appearance, for it was a Verney who was King Charles' standard-bearer at Edgehill—his body left on the field..... At last the old fighting spirit of his race, the family sense of loyalty to a cause, the instinctive devotion that the Verneys aforetime bore to that king :

"For whose house my fathers fought.

With hopes that varying rose and fell."

asserted themselves. <sup>2</sup>

Can it be necessary to explain that the Verneys of to-day only took that name on succeeding by bequest to the Verneys' estates, and neither have nor profess to have any descent from them in blood? The family of Calvert, to which they belong, began with a village tallow-chandler at the time of the Civil War, and its fortunes were founded by his son, who started as a brewer in Cripplegate. <sup>3</sup>

One may fitly close the tale of these ancestral visions with Alison's keen detection in Sir E. Bulwer

<sup>1</sup> *Genealogist* [N. S.] VII, 20.

<sup>2</sup> *Sunday Times*, 12 September 1909, p. 12.

<sup>3</sup> *Hertfordshire Families* (V. C. H.) p. 55.

Lytton of the qualities of "his Norman forefathers," and his description of his host's "ancestral halls".... "built by a Norman follower of the Conqueror." For the Lyttons had similarly taken that name on succeeding to the Lytton estates without "any descent from the old family." So I fear we must ask for more than the evidence of physiognomy.

Assuming that Mr. Smith-*'Carington'* was able to identify his great-grandfather as the William Smith baptized at St. Mary's, Nottingham, 26 Dec. 1699, and further as the son of Robert Smith and Naomi Blood, who were married in that church February 14 preceding,<sup>1</sup> the entire pedigree turns on the next step in the descent, on the one question:—Who was Robert?

Who was the Robert Smith who married Naomi Blood 14 February 1698/9? Can Dr. Copinger produce one single fact concerning this Robert which would afford proof, or even presumption, as to who he really was? He does not produce even one. For his birth, his baptism, his burial, his will, for anything, in short, that would prove his identity, we seek and we seek in vain.<sup>2</sup>

So far then as proof is concerned, the pedigree begins here, begins with "a poor and landless" man (as Dr. Copinger terms him) of whom we can learn nothing.

But if proof fails, guess-work remains; and in the case of such a name as Smith one can guess almost anything. We have seen that by one

<sup>1</sup> I take these dates from Dr. Copinger's book (pp. 310, 339): they are doubtless correct, but no copies of the entries in the registers are vouchsafed.

<sup>2</sup> With his alleged previous marriage I shall deal below.

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unlucky guess John Smith, Lord Carrington's ancestor, was identified by Betham and Berry with a John Smith of Leicestershire ; and (this identity having been disproved) we have also seen that by another guess, for which no proof is offered, Dr. Copinger has assumed his identity with a John Smith of Essex.<sup>1</sup> We have further seen that he assumed the identity of his "John Smith *alias* Carington" with a John Smith in some Essex fines, whom he had himself identified with quite another person, thereby proving that his method was guess-work alone.<sup>2</sup> When, therefore, he similarly asserts the identity of Robert Smith of Nottingham, we are forced to ask for the proof of that identity ; and of proof, again, he gives us none.

The strange thing is that Dr. Copinger himself had to reject the alleged identity of his own ancestor Alderman John Copinger of Cork (d. 1637) with a John Copinger entered in a funeral certificate as younger son of a Thomas Copinger, Mayor of Cork, observing, of the pedigree which asserted it, that

This pedigree is, in his opinion, utterly untrustworthy. The connecting link is effected by making Alderman John Copinger, who died in 1637, the son of a Thomas Copinger ; but as it is perfectly clear that he was nothing of the kind, the author is reluctantly obliged to disregard the attempted connection.<sup>3</sup>

One would have expected him, therefore, to require some proof of the similar alleged identity in the case of the Smith pedigree.

It is quite immaterial to ask by whom the

<sup>1</sup> See p. 218 above.

<sup>2</sup> See p. 201 above.

<sup>3</sup> *History of the Copingers* (1882), p. iv.

identity was suggested: Dr. Copinger, at least, asserts it. And the identity asserted is that of the two Roberts below :—

(Sir) Thomas Smith,<sup>1</sup>  
of Charley Priory,  
Leicestershire,  
born "1578"

↓  
(A)

Robert Smith  
7th son.

(B)

Robert Smith  
m. at Nottingham  
1699.

What has to be proved is: (1) that this (Sir) Thomas had a son Robert; (2) that this son Robert was identical with that Robert Smith who was married at Nottingham in 1699. Of the first proposition no legal, or even satisfactory proof is given; of the second there is not vouchsafed any proof at all.

And proof, I must repeat, is, in this case, essential. The whole district swarmed with Smiths. Indeed, we need not look beyond the great chart pedigree of Dr. Copinger's book to find another Robert Smith, son of Thomas Smith of Titheby,<sup>2</sup> who would be about contemporary with the alleged Robert Smith son of Thomas Smith of Charley, for he was baptized "12 Jan. 1645." He has at least as good a claim to be identified with the Robert Smith of whom we only know that he married at Nottingham in 1699.<sup>3</sup>

<sup>1</sup> His knighthood seems to be in doubt. It has been suggested to me that its attribution is due to confusion with some knight of his name. As a matter of fact, his own kinsman, Thomas Smith of Leicestershire, who was contemporary with him, was knighted in 1637.

<sup>2</sup> About eight miles from Nottingham.

<sup>3</sup> The case has some analogy to the famous Chandos peerage claim (1790-1803), in which Sir S. E. Brydges, the well-known genealogist and editor of

In the book of Mr. Augustus Smith we read that—

If Titheby and Cropwell-Butler scarce tolerated or acknowledged any residents within their boundaries but such as were distinguished by the name of Smith, all the neighbouring villages, more or less, if not in equal degree, had their share of worthies known by the same surname..... Thus Cotgrave, Kenoulton, Plumtree, Casington, Widmerpool, Bridgeford,<sup>1</sup> Barneston, Langar, etc. each produce numerous chips from the same block..... This is not very favourable for the unravelling of genealogical difficulties..... with so common a name as Smith, particularly where the Christian names are equally common,<sup>2</sup> it is a matter of very great difficulty to trace the exact relationship of individuals, etc., etc., (pp. 5-6.)

It is obvious that to identify Robert Smith (B) is like seeking the proverbial needle in a bushel of hay. And we are not even given the slightest reason for supposing that he was identical with the alleged Robert (A) son of (Sir) Thomas Smith.

The dates on p. 229 show that the marriage of Robert Smith in 1699 took place a hundred and twenty years after the birth of his alleged father. Obviously this is a further reason why we must insist on strict proof of the affiliation asserted. Dr. Copinger endeavours to lessen the chronological

*Collins' Peerage*, claimed that his brother was heir-male, through a cadet, of the Lords Chandos. He could trace their descent back to a John Bridges, a Canterbury grocer, who d. in 1699, and who was son of Edward Bridges, a Faversham yeoman. But the question was, who was Edward? The claimant asserted that he was son of a Robert Bridges of Maidstone, whose father, Anthony, was a younger son of the first Lord Chandos; but he could not prove this to the satisfaction of the House. And Mr. Beltz appears to have proved, in his "Review of the Chandos Peerage Case", that Edward's real father was John Bridges of Harbledown by Canterbury, where a local family of Bridges occupied a somewhat humble position.

<sup>1</sup> Adjoining Nottingham.

<sup>2</sup> For instance Thomas Smith of Cropwell Butler had four sons, Thomas, Robert, Edward, and George.

difficulty by alleging that Robert had been married to a first wife, at Strelley, twenty-two years before (3 Feb. 1666-7). But he does not even attempt to prove that the two bridegrooms were identical. And as he does not produce the entries for either marriage, we are left completely in the dark as to what light, if any, they throw upon the question.

The lawyer insists as strongly as the scientific genealogist on the absolute necessity of proving, not merely assuming, identity. Writing of the proof of pedigree, Sir Francis Palmer observes :—

At every turn, too, questions of identity arise: for example, proof of the marriage of A. and B. is adduced — this must include proof of the identity of the spouses. Proof of the death of C. is produced; here again, it is not enough to show that a person named C. died at a particular date; the person so claiming must be identified with the C. of the pedigree. And so with all persons figuring in the pedigree, the establishment of identity is an essential element in the proof (See Hubback, 438).<sup>1</sup>

How much more is this essential when the name is Smith!

I pass to the other Robert, the alleged son of (Sir) Thomas Smith of Charley, Co. Leic. We naturally seek for some evidence of his birth or baptism, as it ought to throw some light on his alleged identity with a man who was marrying so late as 1699. Dr. Copinger does indeed assert that “ all the issue of Sir Thomas Smith by his 2nd wife except perhaps the youngest ” were born at Charley, but should we ask for their baptisms as proofs, we are put off with the excuse that “ No

<sup>1</sup> *Peerage law in England* p. 236.

register of Charley can be found, being extra-parochial with very few inhabitants, and it may never have possessed a register " (p. 309). This excuse will not serve. We have only to turn to Nichols' *Leicestershire* to learn that " the inhabitants of Charley are usually christened, married, and buried at Shepeshed church. " <sup>1</sup>

I stated above that there is " no legal or even satisfactory proof " that (Sir) Thomas Smith of Charley had, as alleged, a son Robert. The only evidence, it will be found, that Dr. Copinger produces, is an old, unsigned, unauthenticated pedigree, demonstrably incorrect, which is found among the MSS. purchased by the British Museum in 1844.

Now, as a lawyer and Professor of Law, and indeed a specialist on the subject, <sup>2</sup> Dr. Copinger must be aware: (1) that this document is not, legally, " in proper custody " ; (2) that, even if it were, it could not possibly be evidence or be accepted as such in any court of law. If he does not know this, anyone acquainted with the subject could tell him so. In his anxiety, however, to make use of this pedigree he ventures on a strange suggestion.

There is in the British Museum, *and has been probably ever since* 1764, <sup>3</sup> a box containing a Carlos pedigree, Smith of Queniborough pedigree, Carington-Smith pedigree, and Dormer pedigree. In the Reference Book it says " drawn upon occasion of lawsuit in which Edward Carlos was claimant about 1764 " (p. 348).

<sup>1</sup> Vol. III, p. 122,

<sup>2</sup> For he is the author of *Title Deeds; their Custody, Inspection, and Production, at Law*, etc. etc.

<sup>3</sup> The italics are mine.



The suggestion that it has "probably" been in the Museum's custody since the date of the trial is, to say the least, unfortunate, in view of the fact that "the Reference Book," which he himself cites, shows it not to have been purchased till 1844!

But let us see what this pedigree, or these pedigrees, however worthless as evidence, assert. Dr. Copinger selects for his purpose the *ex parte* pedigree on behalf of William Smith, on the evidence of which he makes two conflicting statements.

I.

William Smith the defendant put into court <sup>1</sup> a pedigree showing that Thomas Smith..... married a daughter of Martin Powtrel, Esq., <sup>2</sup> and *this pedigree mentions the issue of this marriage as set forth in the main pedigree.* <sup>3</sup> (p. 245).

II.

As defendant William Smith brought into court <sup>1</sup> a pedigree of his family showing how he became entitled as heir-at-law, and *though inaccurate in several particulars,* <sup>3</sup> this pedigree effectively proved (*sic*) that Thomas Smith..... had, by a daughter of Martin Powtrill <sup>2</sup> two sons Thomas and Robert (p. 348).

The passage which I have italicised in the statement on the left is, I regret to say, contrary to fact. Dr. Copinger's main pedigree gives "the issue of this marriage" as *eight* children; the pedigree he assigns to William Smith only names *two*! The point is one of great importance. For

<sup>1</sup> This is not proved.

<sup>2</sup> This alleged second marriage of (Sir?) Thomas Smith is at least not confirmed by the will of his alleged father-in-law, which ignores the existence of such daughter.

<sup>3</sup> The italics are mine.

in what pedigree does he find the eight children whom he names? In the *rival* and *conflicting* pedigree for Carlos!<sup>1</sup> But this Carlos pedigree on which he thus relies expressly states that, of these children, Robert, whom he claims as the ancestor, died *without issue* ('S.P.')!

Let us turn to the pedigree for William Smith, which he himself, we have seen, admits to be "inaccurate in several particulars." And yet he claims that it "effectively proved" that Thomas had two sons Thomas and Robert. Does Dr. Copinger, as a lawyer, know the meaning of "proof"? Here is an unsigned pedigree of which we do not know the history, admittedly an *ex parte* production, admittedly "inaccurate in several particulars"; and because it states a fact, not even (so far as we can see) essential to the case, Dr. Copinger pronounces that fact to be "effectively proved"!

Be it further observed that while the Carlos pedigree makes Robert brother of Thomas (of Earl Shilton) die without issue, the pedigree for William Smith does not contradict that statement. For, though it assigns to his brother Thomas a wife and issue, it does not assign either to Robert.

And, above all, it does not in any way connect him with the Robert Smith, who married at Nottingham in 1699. It does not even favour that identity; for in the great chart pedigree Dr. Copinger shows us Valentine, a *younger* brother of Robert son of Thomas, marrying before 1657, and

<sup>1</sup> Where they are wrongly assigned to his brother George Smith of Queniborough.

their sister Elizabeth marrying in 1655. These dates would not suggest that a brother of theirs married so late as 1699.

I have now made good my statement <sup>1</sup> that there is no "legal or even satisfactory proof" that Thomas had a son Robert, and that, even if he had, there is no proof whatever of the identity of that Robert with the Robert Smith who married at Nottingham in 1699.

Although the reader may be weary of the minute examination necessary, I cannot well pass over the issue raised in the trial to which these pedigrees are referred. <sup>2</sup> Putting it as briefly as possible, the fight was for the Queniborough estate, which an old entail of 1603 had tied up in tail male for a second son and the heirs male of his body, with remainder to his younger brothers and the heirs male of their bodies, similarly, in succession. <sup>1</sup> The male line of this second son came to an end (as Dr. Copinger's pedigree shows) on the death of his great-grandson Edmund Smith of Queniborough in 1727. To whom did the succession then open under the old entail to heirs male? If Dr. Copinger's pedigree is right, the heir male was the Robert Smith who married at Nottingham in 1699 or, if he was dead, his son William.

Is there any mention to be found of any claim by them to the property? *There is none.* The obvious inference is that they were wholly uncon-

<sup>1</sup> p. 229 above.

<sup>2</sup> I have traced with some difficulty and examined the records of it.

<sup>3</sup> It was re-settled on the same heirs in 1638.

nected with the family, a descent from whom is now claimed for them.

But the climax is the pedigree put forward by William Smith "of Ludlow," relied on (we have seen) by Dr. Copinger, "though inaccurate in several particulars." We shall deem this an understatement when we find that this man put forward a pedigree grossly and deliberately false, "showing how he became entitled." As Dr. Copinger's pedigree shows, he was, in reality, the heir male of the *elder* brother, and thus excluded wholly under the old entail of 1603. But he coolly took his grandfather Francis Smith (b. 1617, d. 1677),<sup>1</sup> and foisted him into the younger (Queniborough) line as a 4th son of George Smith of Queniborough who died in 1642! He thus made himself out direct heir male of the Queniborough line and first cousin to Edmund Smith, on whose death in 1727 he would thus be entitled under the old entail!

To prove all this we have merely to compare the pedigree printed by Dr. Copinger, with that which William Smith, he says, "put into court," and without the evidence of which the "Smith-Carington" claim could never have been advanced. Such is the document, the one document, on which Dr. Copinger here relies. On his own showing it is worthless.

One point more. The old Warwickshire and Leicestershire Smiths had been royalists and strong 'recusants' since the marriage with a Giffard of Chillington had rallied them to the old faith. But

<sup>1</sup> These are the dates he gave.

when the Smith-Carington ancestry emerges into the light of day, we find them Baptists. How was this? We are given this explanation:—

1745, the year of the last Jacobite rising, was a terribly grievous time for Roman Catholics; they were suspected and closely watched everywhere..... William Smith, like his ancestors, had ever been a faithful adherent to the Stuarts, and the persecution of the Stuart followers chafed and enraged him. His great sympathy with all who disliked the Hanoverian dynasty drew him to associate with some notably clever anabaptists at Beeston, then violently inflamed against the existing government. His association with this sect, at first from political motives, led to his joining them in their religious tenets and observances about the year 1747 (p. 340).

Mr. Augustus Smith observed in his book<sup>1</sup> that, when it was attempted to identify a cadet of the Leicestershire Roman Catholic Smiths with the Protestant ancestor of his own house, "some fable of his having turned Protestant had been imagined." One would certainly wish for some evidence for a story so singular as that of a persecuted Roman Catholic joining the Baptist Community from his hatred of the Hanoverian dynasty. For, as Mr. Lecky observes, "the whole body of Protestant Dissenters were passionately devoted to the Hanoverian succession,"<sup>2</sup> from their hatred of Jacobitism and Popery, and as he further reminds us,—

The ministries of Walpole and Pelham represented especially the commercial classes and the dissenters, aimed beyond all things at the maintenance of the type of monarchy established by the Revolution.<sup>3</sup>

<sup>1</sup> *Op. cit.* p. 14.

<sup>2</sup> *England in the 18th century*, I, 207.

<sup>3</sup> *Ibid.* p. 473.

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Yet of evidence for this story there is given us none.

Now to all criticism of the pedigree which he claims as "fully verified" Dr. Copinger can make, and in effect does, one reply. He claims at the outset that "over 700 years of the descent in an unbroken line" has, "as stated in Burke's Landed Gentry, Ed. 1898, p. 235, been registered in the College of Arms." As I am extremely anxious to do no injustice to the College, I made enquiries on the subject and was informed that the statement cited is quite incorrect.<sup>1</sup> The descent, however, from the Leicestershire Smiths (which does not involve the former) has been duly recorded, as we learn from the Royal licence issued only a few years ago (1 June 1904) and printed by Dr. Copinger (pp. 372-3). From it we learn

That the Petitioners are descended in the male line from George Smith of Ashby Folville aforesaid, and the Pedigree is duly entered in the Records of the Heralds' College.

If this is claimed by Dr. Copinger as decisive of the question, one must remind him, firstly, that Lord Carrington's descent from the Smiths of Ashby Folville, though now abandoned, had been similarly admitted by an Ulster King of Arms; secondly, that he himself impugns, in the case of the Smiths of Blackmore, a heralds' visitation as "inaccurate" (p. 263).

It is with very great reluctance that I am driven to question a pedigree "duly entered" in the College Records at so recent a period. But in this

<sup>1</sup> p. 144 above.

case, we have seen, it is unavoidable. To raise the question must not be construed as in any way an attack upon the College, whose present head is zealous for the efficient discharge of its functions. What is questioned is only whether its system is sufficiently modernised, its mode of proof sufficiently stringent, to render the admission of error impossible, or at least improbable. The Smith-Carington pedigree affords an admirable test for those who can only examine its working from outside. However rare may be the failure of the tests required by the College to detect the absence of proof for a pedigree submitted to its scrutiny, it will hardly, one presumes, be questioned that such failure is possible. *Humanum est errare*. Its authorities doubtless remember that, some years ago, a pedigree which, according to one of its officers, had been "judicially dealt" with and found to be "duly proved" was publicly exposed and smashed in the recognised organ of genealogists,<sup>1</sup> and that no further attempt was made to vindicate its truth.

And this it is that makes the Smith-Carington pedigree a matter of public interest,—I might almost say, at this moment, of considerable public interest. For it is common knowledge that, where claims to peerage dignities are concerned, the officers of arms to whom was left, in old days, the proof of pedigree, have long ceased to be entrusted with it, the Committee for Privileges now requiring proof on modern lines. But in the matter of claims to baronetcies it is now a pressing question what proof should be required and by whom it ought to

<sup>1</sup> See *The Genealogist* [N. S.] X, 232 ; XI, 63, 204.

be examined. The Departmental Committee on the Baronetage, appointed by the Home Secretary, made the following weighty observations two years ago (1907) :—

We do not consider that the Officers of Arms could ever be a fit tribunal, even of first instance, to try such questions as would be likely to arise, questions which, we may observe, might extend much further than the mere verification of pedigrees. Without derogating in any way from the qualifications and ability of the present Garter, Lyon, and Ulster Kings of Arms, we are of opinion that the position the Officers of Arms hold does not guarantee the necessary legal training and experience to qualify them for the task.<sup>1</sup>

One can only say that *if* the Smith-Carington pedigree was recorded on no better evidence than that which Dr. Copinger produces, the criticism of the Departmental Committee is well within the mark.

But is there any other evidence? Let us consider the position. Dr. Copinger was writing for the family themselves, who had placed at his disposal all the material collected by Mr. Smith—"Carington" in support of the pedigree which he presented for acceptance by the College. He had to establish in his book a brand-new pedigree,—so far as genealogists are concerned, and he provides proofs of the descent. When those proofs are unsatisfactory to an expert, must we not infer that this was because there were no better ones to offer?<sup>2</sup> Especially is this the case with the real *crux* of the

<sup>1</sup> *Report*, p. 3.

<sup>2</sup> It is his own claim that "the disclosure of facts and verification of evidence have been his main objects" (p. 5), so that we may assume he had no mere facts to produce.



pedigree, the affiliation of Robert Smith, who was married at Nottingham in 1699, as son of 'Sir' Thomas Smith of Charley born '1578.' In view of the chronology and of other circumstances, it positively clamours for conclusive proof.

One may venture, therefore, to seek for information on six separate points.

- (1) When was this pedigree entered?
- (2) Who was the herald who recorded it?
- (3) Who was the herald who 'examined' it?
- (4) What evidence was accepted as proving that Thomas had a son Robert?
- (5) What evidence—if any—was produced to prove that Robert was identical with a Robert Smith who was married at Nottingham so late as 1699?
- (6) How did that affiliation find its way into the College records? Directly, as establishing the ancestry of Mr. Richard Smith 'Carington'? Or indirectly, by inadvertence, through the pedigree of some other family?

When these questions have been answered, all the facts will be before us, and genealogists can satisfy themselves whether the College system ensures absolute accuracy. Its authorities have here an admirable chance of proving to the world that it does so and, to that extent, of rebutting the criticism of the Departmental Committee.

With regard to the Committee's criticism of the Scottish and Irish Offices, it may be sufficient to observe that the Ulster office, in 1808, sanctioned the assumption of a baronetcy on the strength of a descent from the first baronet (cr. 1660), although

it is now admitted by that Office that he died without issue,<sup>1</sup> while the Marjoribanks descent recorded at the Lyon Office for Lord Tweedmouth's family was, in my opinion, effectually demolished by the late Mr. Joseph Foster in 1882-3.<sup>2</sup> As I had special knowledge of the matter, I may explain that the question at issue was Lord Tweedmouth's descent from Thomas Marjoribanks of Ratho, Clerk Register and Lord of Session. The descent "proved and registered"<sup>3</sup> was this:—

Thomas Marjoribanks  
of Ratho  
|  
James Marjoribanks  
2nd son  
|  
Joseph Marjoribanks  
(Lord Tweedmouth's ancestor).

"It is, perhaps, hardly necessary," wrote the then Lyon, "to explain that a recorded or authenticated pedigree.... must at every step be supported by the most stringent and satisfactory proof..... The strict examination, which pedigrees presented for registration have to undergo, in the absence of a contradictory, is such as to make an error, particularly in an important or essential point, extremely unlikely." It turned out, in this case, that the pedigree really rested on an admission (13 July, 1602) of "Joseph Marioribankis, second lawful sounne to umqwhile James Marioribankis" as "burges and gild brother." But Mr. Foster was able to show

<sup>1</sup> See Mr. Burtchaell's letter, from the Ulster Office, in *Daily Mail* of 26 June, 1905.

<sup>2</sup> *Collectanea Genealogica*, Vol. III.

<sup>3</sup> In the words of the Lyon Clerk Depute.

that, at this period, there were in Edinburgh many men of the name of Marjoribanks, and that the *identity* (1) of the James M. in this entry with James son of the Clerk Register, and (2) of the Joseph in this entry with the Joseph who was ancestor to Lord Tweedmouth, had been assumed without proof and could not be upheld. He was able to produce another Joseph and several other Jameses, and, so far as I can judge from the records, to overthrow the pedigree.

This case, it will be seen, presents a close parallel to that of the pedigree sanctioned by Betham (Ulster King of Arms) for Lord Carrington's family, but now abandoned as being based on the mistaken identity of two John Smiths. It also turned, I have shown, on that same question of *identity* which is the great *crux* in the Smith-Carrington pedigree. For, as the *Times* observed of the Annandale peerage claims, "given the identity of a person named in one charter with a person named in another, and a genealogist can prove anything."

And there is one point more. Petitions for leave to change one's name by Royal Licence pass through the Home Office, "and the Home Office has assumed to itself the decision as to whether or not a case shall be put forward for the personal consideration of" the Sovereign.<sup>1</sup> I quote from 'The law concerning names and changes of names,' of which Mr. Fox-Davies is joint author, and have no reason to doubt the statements which I cite. Now the same treatise states that refusals are numerous and that they "emanate

<sup>1</sup> *The Genealogical Magazine*, II, 450.

from the Home Office, through which all petitions pass.”<sup>1</sup> If we may further accept the statement that “An application to assume a name where no descent can be shown from any family of that name, and where it is a mere matter of personal caprice, is almost invariably refused,”<sup>1</sup> one becomes curious to know why an exception was made in a case where such descent can be proved to have no existence. Indeed, it is not even asserted in the petition recited in the Licence, which makes the matter stranger still. That the use of a name which is based only on an old Elizabethan imposture should have received, but five years ago, the formal sanction of the Sovereign is a point, one may submit, for the careful consideration of the authorities at the Home Office.

I was once, by chance, shown some proof-sheets of Mr. Smith “Carington’s” unfinished history of his family, in which he gave expression to his extreme gratification at the acceptance of his pedigree by the College, to him the crown of his labours. It had been, we learn from Dr. Copinger, “the dream of” his “life to possess again the old hall of his ancestors” (p. 362), and this ambition also was fulfilled after it had “been out of the family for 140 years” (p. 420),<sup>2</sup> the property thus returning “to the old family proprietors” (p. 423).

More fortunate than Mr. James Dearden, the new possessor of Ashby Folville found his ancestral

<sup>1</sup> *Ibid.*

<sup>2</sup> It was, as a matter of fact, 282 years since Ashby Folville had been possessed by any lineal ancestor (assuming the pedigree to be correct), the connexion claimed being so remote.

monuments already in the church. Mr. Dearden, —who, like Dr. Copinger and Mr. Richard Smith-‘ Carington,’ was a fellow of the Society of Antiquaries,—was under the painful necessity of supplying them.<sup>1</sup> He also, we read, appears to have “appropriated not only to himself but to his visionary ancestors the arms of the ancient family of Rochdale.”<sup>2</sup> The Cheshire Caringtons, we have seen, were Mr. Smith’s “visionary ancestors,” and Dr. Copinger insists upon the family’s right to place the Carington arms in the first quarter of their shield (p. 6.) In the tower of Ashby Folville church the inevitable “arms” now “occupy the small compartments of the tracery; the colouring of the whole is very effective, yet subdued,” as was preferable perhaps when the light contained so stirring a subject as “an armed knight on a full (*sic*) caparisoned war-horse” (p. 447), a refreshing change from the usual scriptural or sacred theme. At Wooton Wawen also was erected, a few years ago, “to the memory of pious ancestors,” “an exceedingly fine window,” in which “Cherubim and Seraphim” are allowed to occupy some of “the traceries,” but “the other traceries contain the armorial bearings of Mr. Smith-Carington” (p. 538.) The old Elizabethan imposture has indeed come into its own.

In *The Great Metropolis* Upton Sinclair describes an experience of his hero at a New York dinner party, where the ‘spring lamb’ had cost a dollar and a half a pound.

<sup>1</sup> Fishwick’s *History of Rochdale*, p. 148; *Studies in Peerage and Family History*, p. 84.

<sup>2</sup> *Op. cit.*

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Mrs. Winnie had a coat of arms; he had noticed it upon her auto, and again upon the great bronze gates of the Snow Palace, and again upon the liveries of her footmen, and yet again upon the decanter of Scotch. And now — incredible and appalling — he observed it branded upon the delicately browned sweetbread!

It must be nearly as difficult, at Ashby Folville, to escape from the "Carington" arms.<sup>1</sup>

But even the discovery of his Norman lineage as heir male of the body of "Hamo de Carington" was not sufficient for Mr. Smith; there were fresh worlds for him to conquer. The Norman dukes should be his ancestors; their arms should be quartered with his own: nay, there were Scandinavian chiefs dwelling at the back of beyond; from these too he would trace his line, from "Halfdan, the old Scandinavian Chief" (doubtless of a territorial army)<sup>2</sup> who, by "Asa daughter of Gystein the Good", was father of a weird creature, "Iver Appland Jarf".<sup>3</sup> Indeed, it was to this illustrious ancestry that the worthy nurseryman devoted his most assiduous research.<sup>4</sup> His work is chiefly represented in Dr. Copinger's book by the enormous Appendix on "the families of de Lenham and Crevequer" (pp. 561-669). We are there promptly confronted by 'Halfdan', and plunge into a wondrous history of the early Norman dukes. To Dr. Copinger this "material seemed of sufficient

<sup>1</sup> See p. 180 above.

<sup>2</sup> Not to be confused with "St. Aldan (*sic*) represented as a Celtic bishop" in the "exquisite" Smith-Carington window at Wootten Wawen (p. 538) who is, I believe, otherwise unknown to hagiology.

<sup>3</sup> See Dr. Copinger's chart pedigree, p. 81.

<sup>4</sup> Dr. Copinger states (p. 551) that of some 234 pages of the history of his family which he had finished no fewer than 164 "dealt with the De Roos, Crevequer, De Lenham, and other families."

interest and value to justify its preservation." He cannot therefore complain if, having thus commended it, it moves his readers to mirth.

There is, for instance, the startling discovery that "William called Longsword, *Duke of Aquitaine*,<sup>1</sup> succeeded as 2nd Duke of Normandy" in 927 ! There are also delightful authorities who are carefully vouched throughout, "Jonathan Duncan, B.A." jostling "Will. Gomm" (p. 568), and Dean Spence alternating pleasantly with "Dean (!) Dudo". We here learn to our surprise that the latter wrote, not, as one had wrongly supposed, in Latin, but—in good modern French. He was privileged to know Mr. Smith's ancestress, "the beautiful and celebrated Gunnora, a damsel of pure Danish descent ;" indeed, he "saw much of her and knew her character well". It is gratifying, therefore, to know that he describes her as "*une très belle femme, très adroite, accomplie et de grand esprit*". We seem to remember that her marriage to Duke Richard the Fearless took place a little late, and that "Dean Dudo" uses some plain language on the subject. For, as the other Dean shyly observes of Mr. Smith's ducal ancestors :— "The aversion of these brilliant and successful men to the Christian marriage tie is remarkable". We are not allowed to part from the dukes throughout more than 50 pages of the "History and Records of the Smith-Carington family", and the irresistible fascination of 'Halfdan' soon brings him back, but this time as a half-way house to "Odin or Woden circ. 250"; for "the ancestors of Maud d'Avranches" (whose

<sup>1</sup> The italics are mine.

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arms Mr. Smith quartered) "can be distinctly traced in the male line without a break to Odin in the third century" (p. 656)! Even Mr. Smith's greed for ancestry could not penetrate beyond Odin; there is a point in history where Deans fail, where the darkness ceases to be even lightened by the learning of a B.A.

The adventurous explorer, however, might well be content with his spoils; he had added, as the fruits of his raid, to the arms of "his ancient house" the coats not only of the "Dukes of Normandy" and of "Rollo," their mighty sire, but those of "D'Oisy" and of "D'Arques."<sup>1</sup> That their alleged bearers all lived before the days of armorial bearings is a detail on which it would be cruel, and indeed needless to insist. For the pedigree breaks down at both ends. It is alleged (A) that the Crevequers were of the male line of the Norman dukes, which is certainly not proved,<sup>2</sup> and (B) that an heiress of the Lenham family (one of whom had undoubtedly married a Crevequer co-heiress) married "John Carington *alias* Smith."

The latter of these allegations requires detailed investigation; for it can be shown unfortunately, that it has been bolstered up by juggling in the strangest manner with the evidence produced.

<sup>1</sup> They are duly illustrated and blazoned in Dr. Copinger's book (pp. 81, 83) and the right to quarter them there shown. And they further figure as quarterings in the "Arms of Smith-Carington," which form the frontispiece; but the arms of the Dukes are there depicted as two lions passant, while on p. 81 they are "Gules, a lion rampant, or."

<sup>2</sup> The allegation is that Hugh de Crevequer (i. e. Crèveœur, Calvados), the founder of the family in Kent, was a younger brother of Robert Fitz Hamon and "Hamo dapifer," and a son, therefore, of Hamon *dentatus*, count of Corbeil. This affiliation is ignored by Dugdale and is not accepted now as proved. Moreover, Mr. Smith made Hugh die in 1119 and yet identified him with the Hugh of the Bayeux Inquest in 1133 (pp. 630, 633).



The whole of the actual evidence in support of it consists (A) of the statement in the spurious narrative that John "married Millicent Layneham, a mayden that was Robartte Laynehames daughter and heire," (B) of the fact that there was a small manor of 'Lanehams'<sup>1</sup> in Rivenhall, which derived its name from a family of Lenham, who held it of the lords of Rivenhall manor. But the descent of this manor has not been proved.

There is no necessity, however, to disprove the marriage, for, even if it were established, there is absolutely nothing to connect the above "Robartte Layneham"<sup>2</sup> with the Kentish house of Lenham or to prove his descent from its marriages with the heiresses of Crevequer and of 'Averenges.' And of this the author, we shall find, must have been painfully aware, for he fails to produce any evidence in its support. He gives, it is true, on p. 80 a chart pedigree of the house from the time of Richard I. to that of the alleged marriage, in which Edmund de Lenham (who held Lanehams in 1324) is shown as grand-father of the above Robert and as himself a younger son of Sir John de Lenham, the head of the house, by Margaret 'Averenges.' For this pedigree the reference vouches Harl. MS. 1137;<sup>3</sup> but to that manuscript we refer in vain, for it contains nothing of the kind. It is simply, in fact, the visitation of Essex, and on fo. 72 it

<sup>1</sup> An outlier, adjoining Cressing. It is shown as 'Lavenhams' on Morant's map.

<sup>2</sup> It is worth noting that the Suffolk Lavenham was pronounced, and sometimes written, 'Laneham.'

<sup>3</sup> We are expressly told that "the Editor has shown..... on such pedigrees..... the authorities on which the pedigree is based" (p. 6) and that "verification of evidence" has been one of "his main objects."

states that "John Smith" married "Milicent dau. and heir to Robert Leynham," a statement repeating that of the spurious narrative. All the rest of this Lenham pedigree is someone's unauthenticated concoction!

And our confidence in it is not increased by its statements: (1) that Edmund married "Alice sole heir of Alan de Builstowe" (*sic*); (2) that his niece Alianore de Lenham married Sir John Gifford "of Bures St. Mary, co. Suff."; (3) that Robert, Milicent's father, married "Alice d. and coh. of John Hende of London, 1391." For, as to the first, "*Builstowe*"<sup>1</sup> should be *Buildwas*, Alan being lord of Little Buildwas, co. Salop.<sup>2</sup> As to the second, Sir John Giffard (not Gifford) was lord, not of the Suffolk Bures, but of Bowers Giffard in the far south of Essex.<sup>3</sup> And as to the third — although the author claims, on the strength of this marriage, that the Smiths were entitled to quarter the Hende coat<sup>4</sup> — it is certain that Sir John Hende, alderman and cloth worker of London, who was lord mayor in 1391 and died in 1418, was succeeded in his estates, mainly in Essex, by his two sons (both named John), who were successively sheriffs of the county, and that the elder of them left an only child Joan, who inherited the whole. None of the estates ever came to the Smith family although they seem in later days, on the extinction

<sup>1</sup> This is no misprint, for the name recurs in the same form on p. 518.

<sup>2</sup> See Eyton's *Shropshire*, VII, 322-3. There is nothing to identify his son-in-law Edmund 'de Leynham' with the Edmund of Rivenhall, but the point is immaterial.

<sup>3</sup> And yet Dr. Copinger has made a special study of the "Manors of Suffolk."

<sup>4</sup> It also appears in the frontispiece among the "Smith-Carington" quarterings.

of Sir John Hende's direct heirs, to have advanced a claim to them—which was not successful.<sup>1</sup>

The identity and descent of the Hende estates are well ascertained. Dr. Copinger states (p. 78) that “by fine in the 8 Hen. IV. (1406)” Sir John “had settled the manors of Fering, Stysted, Coggeshall, Bockyng, Cressing, with divers other manors and lands on himself and Elizabeth his wife” etc. etc. But on reference to the fine,<sup>2</sup> we actually discover that the manors settled were (1) Little Canfield, (2) Little Chishall, (3) Bradwell (by Coggeshall) and (4) Pycotts! So much for the author's accuracy! The manors he names as settled were not Sir John's to settle. I have shown above that even if John “Carington *alias* Smith” did, as alleged in the spurious narrative, marry the heiress of Robert “Layneham”, she certainly did not inherit any of the Hende estate, so that all she can have brought her husband (if even that) was the small manor of Lanehams in Rivenhall. The *Landed Gentry* states that he obtained with her “great possessions”, and Dr. Copinger (p. 78) styles her “the heiress of a very important Essex and Kentish family”; but, on his own showing, she was nothing of the kind. She was, according to him, only the descendant and heiress of Edmund de Lenham, a younger son, who, in 1324, held in Rivenhall “one messuage and 26 acres of land with appurtenances” (p. 518). Such were the “great possessions”. It does not make the matter much less absurd when, on turning to the Inquisition cited by Dr. Copin-

<sup>1</sup> I take this information from another source. It may be added that even the spurious narrative does not make Sir John Hende's daughter an heiress.

<sup>2</sup> Easter term, 1407 (8 Hen. IV), file 61, No. 114.

ger,<sup>1</sup> we discover that the ' 26 ' should be 120.<sup>2</sup> It would seem that the usual Roman numerals employed to denote "six score" (i.e. 120.) must have actually been read by someone as denoting 26! So again we gather that the Author's references must be tested at every point.

I have said above that Dr. Copinger must have been painfully aware that there was nothing to support his statement that this Edmund de Lenham was a younger son of Sir John de Lenham (co. Kent) by Margaret "Averenges." There is, moreover, against it the fact that a plea of 10 Ric. II. assigns four sons to the marriage, and that Edmund is not among them.<sup>3</sup> How then, does the author attempt to prove his case? He is driven to resort to a device which can only be described as desperate. The Kentish Lenhams possessed for a time the manor of *Redenhall, Norfolk*: by taking the records referring, as he must have known, to this connexion and applying them to *Rivenhall, Essex*, he endeavours to connect the family with that wholly different parish and so with Edmund de Lenham!

Morant, the historian of Essex, begins his account of Rivenhall by giving us no fewer than thirteen variants of the name; but the wholly distinct name of *Redenhall* is not, and could not be among them. Dr. Copinger begins his own account by boldly stating that Rivenhall was "variously spelt Ravenhall and Redenhall" (p. 513) and proceeds, on the strength of this assertion, to

<sup>1</sup> "Inquis. 18 Ed. II m. 61."

<sup>2</sup> The actual date of the Inquisition proves to be 9 July, 1325.

<sup>3</sup> Wrottesley's *Pedigrees from the Plea-Rolls*, p. 171.

introduce in his account of *Rivenhall* (pp. 514-7) records relating to *Redenhall*, Norfolk. When I say that "he must have known" that this was what he was doing, I do so not merely because he is an expert in these matters—as we must infer from his being the author of works specially dealing with them<sup>1</sup>—but because he actually cites, in six different footnotes, Blomefield's *Norfolk*, even giving volume and page! When for instance, we read (p. 515) that "According to Blomefield, Ralph or Roger de Lenham, the father of Nicholas, had a grant of Rivenhall," we need not even verify the reference ("Norfolk, vol. V, p. 367") to know that he is speaking of *Redenhall*, and that Dr. Copinger has coolly altered its name to that of the *Essex Rivenhall*. He further states (p. 514) that "in the year 1191 Robert de Crevequer is described as of Rivenhall, Essex," a statement which he supports by no reference and which cannot possibly be true, for the descent of Rivenhall is known. Yet even this is not all: we read of Robert's son, Hamo de Crevequer, that he "held Moreton, Elsenham, and Rivenhall" (p. 515), for which we are referred to "account of Crevequer family, appendix." This appendix is attributed to the late Mr. Richard Smith "Carington" and in it we find (with great difficulty) the statement (p. 654) that, on Hamo's death, he was found to have held in Essex "Elsenham Manor, Morton Manor." This statement is perfectly correct;<sup>2</sup> but Dr. Copinger has coolly added the

<sup>1</sup> *Suffolk Records*; *History of the Parish of Buxhall*; *History of the manors of Suffolk*, etc.

<sup>2</sup> See *Calendar of Inquis. Hen. III*, p. 172.

manor of Rivenhall, which is not in the record! <sup>1</sup>

Seven lines of the author's text have yielded the above three instances of the inexplicable methods he has here seen fit to employ.

But, to attain his end,—to connect, through 'Rivenhall,' Edmund de Lenham with the Kentish house—further obstacles had to be disposed of. It was not sufficient to confuse Rivenhall with Redenhall; it had further to be shown why, if the Lenhams of Kent held, as alleged, Rivenhall (or, to speak more accurately, the manor of Lanehams in Rivenhall), it did not descend to their heiress, Alianore, who married Sir John Giffard. The explanation, of course, is that the manor was never theirs. But Dr. Copinger, who asserts that it was,—having told us that Sir John and Alianore "were married in 1346, and three years later they had both passed away"—proceeds thus:—

As they left, according to pedigrees extant, five children, the rich heiress, but poor creature, Alianore, must have twice been inflicted with twins. What is perhaps still more important the Manor of Lenham (*sic*) never seems to have brightened the lot of any one of this offspring (p. 518).

The reason why their lot was not "brightened" by possession of this manor is simply that they had no claim to it, their ancestors never having held it!

As a final illustration of Dr. Copinger's accuracy, we may take the above quotation, of which the first sentence is as wild in its statement as in the English in which he makes it. For that statement

<sup>1</sup> The amazing thing is that even *Redenhall* cannot have belonged to the Crevequers, for it was held (as he shows, though he calls it Rivenhall) by the Lenhams long before they shared in the Crevequer inheritance.

is based upon the fact that Alianore died in 1349, having "married in 1346." Now the inquisition on her grandmother Margaret in 1334 shows her as already the wife of John Giffard and as aged "22 years and more."<sup>1</sup> And an inquisition of 1336 similarly shows her as his wife, and as "aged 25 and more,"<sup>2</sup> although Dr. Copinger enters her on p. 80 as "b(orn) c(irc) 1320." Consequently the "poor creature" must have had not three, but at least fifteen years in which to produce five children, and Dr. Copinger's "twins" vanish. When we have added this correction to those already made, it will be seen that one can hardly be expected to treat his pedigrees seriously.

The attempt, in short, to trace the Lenham or Laynham ancestry through the descent of this small sub-manor in Rivenhall collapses. That word, indeed, but feebly expresses its irreparable breakdown. It fails at every point. If it seems to have been dealt with at excessive length, the reason for such thorough criticism is that on it hangs so large a portion of Dr. Copinger's volume. It is only on this slender thread that hang the great pedigrees of Crevequer (pp. 81-2) and D'Avranches (p. 83) together with that of Maminot (p. 80), to say nothing of the proud quarterings that are now claimed in their right (p. 79). On it, also, alone depends the great Appendix on "the families of De Lenham and De Crevequer" (pp. 561-669), with the descent from the Norman Dukes, which proved to Mr. Smith 'Carington' the most

<sup>1</sup> 4 May, 8 Edw. III. *Cal. Inq.* Vol. VII, p. 409 (n° 599).

<sup>2</sup> 3 Feb. 10 Edw. III. *Ibid.* n° 706.

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fascinating study of all. The whole of this, as I have said, depends on the slender thread of the Lenham pedigree, and, in spite of the strenuous attempts naturally made to prove it, I do not hesitate to say that of the descent of Millicent "Layneham"—alleged by the spurious narrative to have married John Carington *alias* Smith—from the marriage of Nicholas de Lenham (Kent) with the Crevequer heiress in the 13th century, there has not been produced any proof whatever.

*Satis superque.* Of the "History and Records of the Smith-Carington family from the Conquest to the present time" enough and more than enough has been said. Those who have expended their five guineas in this work of "very considerable general historical importance," as it proclaims itself in its prospectus, may be tempted to admit that, as there stated, it "is one of the most remarkable genealogical investigations ever carried out." They will learn what Dr. Copinger considers to be a pedigree "fully verified..... in the direct male line to the Conquest." They may even deem him emulous of those bells of Ashby Folville, which proclaim, in the church tower itself (p. 447),

We'll praise, whene'er we ring,  
Our Squire and his good lady."

though an older bell has the bad taste to be rung to the glory of God.<sup>1</sup> They may feast their eyes on a photogravure of the Manchester residence of this ancient house, or learn how the Manchester

<sup>1</sup> Inscription of 1739.



architect to whom its "restoration was intrusted" (*sic*) produced at its ancestral home an "imposing general result." But enough of this vast "family history of great genealogical and historical interest," with its Manchester imprint at the end and its Manchester Professor on the title-page. *Solvitur ridendo.*

# THE *GESTE* OF JOHN DE COURCY

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*Medieval historical romances—The demon-countess of Anjou—The knight of the swan—Melusine—Haino's demon-wife—The 'Gesta Herewardi'—Fulk Fitz-Warine—Mythical deeds of real men—Romance of Richard Cœur-de-Lion—The 'gesta' of John de Courcy—The Book of Howth—Sir Amore 'Tristram'—John de Courcy's capture—Romance parallels—Capture of Hereward—John's imprisonment—His great feat—Romance parallels—Colbrand the Dane—John's reward—The 'hat' story—Its growth—Licences to wear the 'bonet'—'Randolf, erle of Chestre'—His lost 'geste'—'The fair of Lincoln'—The earl as hero.*

In his preface to the Rolls series edition of Ralf de Coggeshall Father Stevenson makes some observations on the story of Fulk Fitz Warin<sup>1</sup> which will serve as an excellent introduction to the subject of this paper.

The adventures of Fulk Fitz Warin... form a good example of a certain species of narrative which was very popular during the Middle Ages, not only in our own country, but upon the continent... Reared upon a basis of truth, more or less broad according to circumstances, is erected a large and ambitious superstructure of fable, the marvels of which are due to the inventive powers of the *trouvreur*. There is no lack of narratives of this kind ; indeed it would not be easy to exhaust their titles. It may be enough to specify the poems of Beowulf,

<sup>1</sup> The text of which (from the Brit. Mus. MS.) he appended to Ralf's chronicle.

Havelock, and Grim, among our Saxon ancestors ; the lay of the Nibelungen for the north of Europe ; the romances of Charlemagne and his Paladins, and of the Cid Campeador for the south ; while within the limits of our own country we possess those remarkable cycles of legends of which King Arthur, Gawin, Guy of Warwick, and Bevis of Hampton are respectively the central figures. Coming down to a later period, and falling somewhat more closely within the jurisdiction of history, are the metrical life of Richard Cœur-de-Lion, the ballads of Robert Hood, the outlaw of Sherwood Forest, and the life of William Wallace, which a widespread tradition ascribes to Blind Harry. Each of these narratives, be it prose or poetry, possesses, along with a substratum of history, a large proportion of the alloy of fiction ; and these are so intermixed and mingled that it is always difficult to specify the exact line at which the history ends and the fiction begins.<sup>1</sup>

In addition to those here named we have the legendary history of Hereward, of which I shall speak below. But there was, as it seems to me, about the end of the twelfth and beginning of the thirteenth centuries, quite a group of notable men who became the heroes of legendary tales. These were Richard Cœur-de-Lion, Fulk Fitz Warine himself, Eustache le Moine (connected with the history both of France and of England), John de Courcy, and Randolph, Earl of Chester. I do not include their great contemporary, William the Marshal, in the list, because, although he became the hero of a long narrative poem, it is merely historical in character, and does not include, as in the other cases, deliberate fiction or romance. Of the five named above two are well-known roman-

<sup>1</sup> *Op. cit.* p. xxi.

ces ;<sup>1</sup> Eustache was the subject of a French romance ; of John de Courcy no 'geste' has, it would seem, been suspected ; Earl Randolf is believed to have been (on the strength of a single allusion) the subject of a ballad-cycle, but no trace or fragment of it has yet, it seems, been discovered.

Fulk Fitz-Warine and Eustache le Moine par-took like Hereward, John de Courcy, and the mythical Robin Hood, of that outlaw character which romancers seem to have found peculiarly attractive.<sup>2</sup> Like Fulk Fitz-Warine, John de Courcy seems to have been alternately in rebellion and in favour, under King John,<sup>3</sup> as Hereward and Eadric, possibly, had been under King William.

It is the object of this paper to show that John was the subject of a *Geste* and to disentangle its mythical tales from the true history of its hero. At the close there will be added some observations on what I believe to be a fragment of the lost *Geste* of "Randolf, earl of Chester."

We have to deal, in these romances, with a singularly interesting department of the literature of the Middle Ages. Between the pure romances, such as "Amys and Amylion," "Sir Isumbras," "Ipomedon," and so forth, and *l'Histoire de Guillaume le Maréchal*<sup>4</sup> there lay a vast tract of

<sup>1</sup> Ward's *Catalogue of romances*, I, 944-950 (Richard) ; I, 501-508 (Fulk).

<sup>2</sup> I do not add to their names that of Eadric the Wild, the famous outlaw of the Conqueror's day, because there does not seem to be any connected history of him, though the *Monasticon* preserves, under Wigmore Abbey, some mythical details of his struggle with Ralf de Mortimer. See also below.

<sup>3</sup> See my detailed account of John's chequered career in vols. III and IV. of the *Antiquarian Magazine and Bibliographer* (1883).

<sup>4</sup> Ed. Paul Meyer 1891-1901. The editor describes it as "un document historique de premier ordre" and "le type le plus remarquable d'un genre dont il ne nous est parvenu que de rares spécimens." He compares *The Song of Dermot and the Earl*.

mingled history and romance. In the celebrated "cycle of Charlemagne" a very famous monarch becomes the central figure; but in other cases an historical character is the subject of a separate story in which a varying proportion of fiction is combined with the facts of his career. It were tempting to pursue the subject in its purely literary aspect and to contrast with these medieval tales the historical novel of to-day. The historian, however, must refrain from wandering far afield, although he must prepare the reader's mind for the drastic rejection of alleged facts by illustrating the daring character of these romancers' statements and the liberties they took with truth.

Take, as definite illustrations, Richard Cœur-de-Lion, Hereward, or Fulk Fitz-Warine. Perhaps Richard's case is the most amazing of all. Mr. Hewlett, indeed, greatly daring, does, in his 'Richard Yea and Nay,' make our warrior King marry, in defiance of history, "Jehane de Saint Pol" and crown her Countess at Angers. But this is frankly recognised as a piece of historical fiction, even if it somewhat exceeds the limits permissible in such work. When, however, we turn to the medieval romance, it is by no means clear to what extent its purely fictitious portions would be recognised as such or distinguished from the actual facts of Richard's career. His capture when making his way across Europe in disguise is a fact which "every schoolboy" knows, but, instead of placing it after the crusade, the romance assigns it to his return from a purely imaginary pilgrimage to Palestine before the crusade, and mixes it up

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with an imaginary King, whose imaginary daughter provides the usual lovesick princess with the help of whose borrowed kerchief Richard tears the heart from out the usual lion, and thus obtains his famous name, which was doubtless claimed as proof that the whole tale was true.

The extraordinary daring of romancers in associating with real personages—even Kings themselves—the wildest fictions of their fancy is perhaps most vividly shown in their making Henry the Second marry, not Eleanor of Aquitaine, but a princess of demoniacal origin, Cassodorien, daughter of Corbarino, King of Antioch !

In its original form, as told by Gerald the Welshman, the tale applies only to a nameless ancestress of Henry, the demon-countess of Anjou. Scraping together all the scandal on which he can lay hands as to Henry's origin, he first repeats the wild story that his mother the Empress Maud had married his father in the lifetime of her first husband, the Emperor Henry, who was living as a hermit at Chester,<sup>1</sup> and then tells us how "a certain countess of Anjou, of great beauty but of unknown extraction and married only for her bodily charm," rarely went to church, and always left before the elevation of the Host. At length, when, by the count's orders, four knights endeavoured to detain her, she caught up two of her little sons and flew away through a high window.

<sup>1</sup> Gerald also tells this story in his *Itinerarium Cambriæ* (Ed. Dimock, p. 140) in conjunction with the similar yarn that Harold had survived the battle of Hastings and lived long afterwards as a hermit at Chester, a tale, it would seem, widely believed. The emperor Henry is known to have died in 1125.

Nor were she or the two boys ever seen again.<sup>1</sup>

This, of course, is merely one of the Swan-maiden group of folk-tales, found in various forms all over the world. It belongs to those taboo stories in which a breach of the taboo is followed by the flight or disappearance of the wife so strangely acquired. Gerald's contemporary, Walter 'Map,' also an archdeacon, tells, as an historical fact, another variant of the tale, and applies it to a very real person, Eadric 'the Wild.' He, we read, had captured an unearthly maid of great beauty for his wife, and took her with him to London that the Conqueror might see her at court. But, after years of married life, he broke the taboo she had warned him against, and she vanished out of his sight.<sup>2</sup>

Gerald had at least refrained from identifying the demon-countess, but the author of King Richard's *Geste* had, as I have said, no such scruples. According to him, Henry had declined, when twenty years of age, to marry any woman but the most beautiful in the world. When 'Cassodorien' was found to fulfil this condition, he married her out of hand, but she shrank—like Queen Elizabeth—from the elevation of the Host, which threw her into an alarming swoon. By Henry she became mother of two sons, Richard and John, and of a daughter, 'Topyas'! After fifteen years of married life, during which she had refrained from attending mass, she was one day forcibly detained; but, at the sound of the bell, she flew into the air, carrying with her John and her daughter.

<sup>1</sup> *De pri-<sup>us</sup> ipis instructione* (Rolls Series) p. 301.

<sup>2</sup> *De nugis curialium*, II, cap. 12.

John fell from the air, in that stound,  
 And brake his thigh on the ground ;  
 And with her daughter she fled away,  
 That never after she was y-seye.

Henry, we learn, did not long survive her loss.

We can understand Gerald 'Cambrensis' telling his wild tale, and even Richard, as he asserts, recklessly saying of the family strife—'From the devil we came: to the devil we shall go.' The point, however, that I wish to make is that in the *Geste* we have real persons, and even real kings, of then comparatively recent date, jumbled up with the wildest fictions and with tales of folk-lore origin.

But one of our Queens also came of the unearthly brood. In 'The Red Book of the Exchequer'—of all unlikely places—we may read the tale of the swan (*de cigno*).<sup>1</sup> Godfrey de Bouillon (*Buillon*), surnamed 'Alakete', had died leaving a wife and an only daughter. Upon Reiner duke of Lorraine invading their lands, they appealed for help to the Roman Emperor. As with John de Courcy, there was to be a single combat, but no man dared to face Duke Reiner in the field. Then, beneath the castle wall of Bouillon there appeared a swan, a golden chain about its neck, drawing after it a skiff from which—as we have seen at Covent Garden—there leapt forth a gallant knight, who fought Reiner, defeated him, and cut off his head, exactly as we might expect. On him the Emperor bestowed the hand of the heiress, by whom he was father of a daughter Yda, who marrying Eustace, count of Boulogne, was grandmother of Maud,

<sup>1</sup> *Liber rubeus de scaccario*, p. 753.



Stephen's Queen.<sup>1</sup> Eventually, when the knight's death was approaching, his wife pressed him to reveal his origin. Thereupon the swan returned, and the knight, entering the boat, departed as he had come.

That this tale is a variant of the swan-maiden group is obvious from the incident of the taboo and its breach; for a prohibition to learn the name of the mysterious visitant is a feature met with in these tales.

For yet another variant of the tale we return to Walter Map. The tale he tells closely resembles the famous legend of Melusine, the unearthly ancestress of the house of Lusignan, as told by Jean d'Arras in his much later work. Melusine, of no known origin, was found, near a lovely spring, by Raimondin, her future husband, who was struck by her strange beauty, and whom she consented to marry on condition that he never attempted to see her on a Saturday. At length, taunted by his brother, he rushed to her quarters on a Saturday, and boring a hole through a door with his sword, beheld her splashing in her bath, a serpent from her waist downwards,<sup>2</sup> in fact a mermaid. Taxed afterwards with being a "tresfaulce serpente," she eventually left husband and sons, flying to a window,<sup>3</sup> and leaping thence in the form of a flying serpent (i.e. a dragon).<sup>4</sup> Here we have, as it

<sup>1</sup> See my *Studies in Peerage and Family History*, p. 152.

<sup>2</sup> "du nombril en bas en signe de la queue d'une serpente grosse comme ung quaque à harenc."

<sup>3</sup> "saillist sur une fenestre..... aussi legierement comme se elle eut vollé ou eu elles" (ailes).

<sup>4</sup> "laissa la fenestre, et saillist en l'air,..... et lors se mua en forme de serpent moult grande..... Ainsi s'en ala Melusine, semblent de serpent vollant par l'air."

would seem, an awkward combination of the swan-maiden, who flies, with the mermaid, or serpent-woman, who swims, but the connexion with water, the taboo and its breach, and, above all, the descent of illustrious progeny from the marriage, are all there.<sup>1</sup>

Map's hero, "Henno dentatus," is not identified by his editor, but I propose, by an emendation, to read his name as Heimo (*i.e.* Haimo). Here then we have a famous man, Hamo "of the mighty teeth"<sup>2</sup>—the "Haimo dentatus" of William of Malmesbury—who charged and overthrew his lord at the battle of Val-ès-Dunes (1047), only to be carried off the field himself, dead upon his shield. By the sea-shore, on the Norman coast, he had found, as a youth, a lovely maiden, wrecked, as she told him, "with dovelike innocence," on her way to be married to the King of France. "Henno," addressed as "Flower of youths, adorable light of mankind," fell madly in love with her, entrusted her to his mother's care, married her, and became the father of most lovely children. But, Alas! she had one failing, a horror of holy water and an inability to be present at the consecration of the Host. She always arrived when the first was over, and left before the second.<sup>3</sup>

Her mother-in-law, suspecting the worst,—the recognised *rôle* of the mother-in-law, even in those

<sup>1</sup> Gervase of Tilbury tells what is practically the Melusine story,—that of a woman who, on breach of the taboo, turns into a serpent,—of Raymond of Rousset castle in the province of Aix.

<sup>2</sup> Mr. Freeman vaguely supposes "some personal peculiarity," but Map expressly states "*sic a dentium magnitudine dictus.*" Melusine herself had a son, "Geuffroy au grant dent."

<sup>3</sup> "*aspersionem aquæ benedictæ vitabat, horamque corporis dominici et sanguinis conficiendi caute præveniebat fuga.*"

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remote days,—bored for herself a peephole into the lady's chamber, and, early on Sunday morning, when her husband had gone to church, beheld her, on entering her bath,—change into “a dragon.” The lady would probably have retorted that, in the case of her mother-in-law, no change was necessary. The reality, however, of her own change is proved by the fact that, “on leaving the bath, she tore to fragments with her teeth the new cloak which her maid had laid out” in readiness! She then resumed human form. The mother-in-law hastened to her son with her story of the wondrous doings of this quick-change artist: a priest was summoned; taken by surprise, she was sprinkled with holy water; with a sudden leap she sprang through the roof, and, with a loud shriek of woe, vanished from her home.<sup>1</sup>

“Her descendants,” we read, “are many.”<sup>2</sup> These words confirm my belief that we are dealing with *Haimo dentatus*, “the forefather of men famous in British as well as in Norman history.”<sup>3</sup> For, evidently, Walter Map is speaking of the ancestor of known people. But according to two family histories published of recent years,<sup>4</sup> he was also the cherished forefather of houses extant among us, whom Walter Map would thus endow with a

<sup>1</sup> The writer's theological comments may be left in a learned tongue: “Nec miremini si Dominus ascendit corporaliter, cum hoc permiserit creaturis, quas etiam necesse sit deorsum invitas trahi.”

<sup>2</sup> “Hujus adhuc extat multa progenies.” *De Nugis Curialium*. (Ed. Wright), p. 170.

<sup>3</sup> Mr. Freeman proceeds to make him father of Robert Fitz Hamon, though citing William of Malmesbury, who definitely styles him Robert's “avus”. But the point is one of difficulty.

<sup>4</sup> *The History of the Granville family*. By Rev. Roger Granville (1895); *History and records of the Smith-Carrington family*. By Dr. Copinger (1907).

demon ancestress. Let us hope that they may not be tempted to say with Richard Cœur-de-Lion, who found himself in like plight, that "from the devil they had come ; and to the devil they would go."<sup>1</sup> Mr. Smith "Carington," who delighted in his newly-acquired ancestor, claimed Hamon as "a perfect Paladin," but reluctantly confessed that of his wife "no details are obtainable."<sup>2</sup> For a demon ancestress he might even have abandoned the fond hope that she was at least a bastard daughter of Duke Robert.<sup>3</sup>

Let me, however, make my point. Here are two literary archdeacons representing men of their own time as of demoniacal origin. We have to think ourselves back into the thoughts of such an age as that. Perhaps it is not, after all, so long a journey as it may seem. But were there any limits to archidiaconal credulity ? And is that credulity, even now, wholly extinct ? One does not know. Mr. Maskelyne, possibly, could tell us.

A striking instance of the attribution to a very real man of wholly fabulous achievements is that of the famous Hereward. The noteworthy feature of the *Gesta Herewardi* is found, not in the character of the deeds, which are rather fantastic than incredible to the men, at least, of those days, but in the writer's alleged extraordinary care to ascertain the facts. There are the usual wanderings, the usual villain, the usual beautiful princess, and

<sup>1</sup> "de diabolo namque eos omnes venisse et ad diabolum dicebat ituros esse." *Giraldus Cambrensis* (Rolls Series) VIII, 301.

<sup>2</sup> *Op. cit.* pp. 595, 607. Compare p. 248 above.

<sup>3</sup> "Aeliz de alia concubina" according to Robert de Torigni. Dr. Copinger, *more suo*, names her 'Adiz' (p. 82). The Granville book assigns to Hamon quite a different wife, a sister of the Emperor Otho.

all the episodes familiar in a romance of chivalry. And yet the writer, on his own showing, is no romancer ; he derives his knowledge partly from the work of Hereward's own chaplain, Leofric, and partly from the oral information of those who had seen and talked with him and of some even who had been his comrades from the first (*a principio illius*). Mr. Davis, indeed, definitely states that "the fables about the early wanderings of Hereward..... occur only in the *Gesta* and are derived from Leofric alone", and that as "these, as reported in the *Gesta*, are purely fabulous, it is probable that the poem, whether contemporary with Hereward or not, was a mere romance." But I cannot myself read the *Gesta* as giving these adventures on Leofric's authority alone.

Let us be fair, however, even to a writer of romance. Mr. Freeman sarcastically wrote :

Hereward goes to "quidam regulus Cornubie, Alef vocabulo", who, as he was called after the first letter of the Hebrew alphabet, most likely held his court at Marazion. The romance does not venture on any name for the Irish prince whom Hereward visits, but when he is shipwrecked in Flanders, instead of the renowned Baldwin, he comes across, "Comes terræ illius, Manasar vocatus nomine".<sup>1</sup>

To Mr. Freeman, who was always the historian in a hurry, "Manasar", doubtless seemed as absurd a name for a count as "Alef" for a local prince. But what the *Gesta* says is that Hereward "ejectus iterum in Flandriam, Sanctum Bertinum naufragium

<sup>1</sup> Appendix on "The Hereward Legend" in *England under the Normans and Angevins*.

<sup>2</sup> *Norman Conquest* (1871), IV, 807.

pertulit". Now, corrupt and fantastic as the *Gesta* is, there is some method in its madness. St. Omer was the home of Harold's alleged bride, Turfrida, and 'St. Bertin' can only stand for the famous abbey of that name at St. Omer. While at St. Omer, he is summoned by Baldwin, a famous knight of that province, to a fight with the *vidame* of Picquigny;<sup>1</sup> and the Count "de Ginnis" also figures in the story. The scene of his exploits, therefore, is well defined, and, unfortunately for Mr. Freeman, Manasses was a family name with the Counts of Guînes.<sup>2</sup> Confused, therefore, though the story is, the name itself is not absurd, but very much the reverse. One is reminded of his luckless ridicule of Froude for his "grotesque" error in speaking of the ship "*Ark Royal*" as the "*Ark Raleigh*", when Froude, as it happened, was perfectly correct.<sup>3</sup>

The case of Fulk Fitz-Warine is in some ways more startling, because, living as he did at a later date than Hereward, he was much nearer to the men who heard his story told,<sup>4</sup> and was also the subject of entries in prosaic public records. Moreover, the persons introduced by name had a very real existence. His 'cousins,' Baldwin de Hodnet and Audolf de Bracy (of Meols-Brace), and men like Walter de Huggeford (Higford) were all identified with ease by Eyton, the learned historian of Shropshire. A story which begins, in the

<sup>1</sup> "vicecomitem (*sic*) de Pynkenni."

<sup>2</sup> See my *Geoffrey de Manderville*, p. 397. The *Gesta* reads "Manasar Vetus nomine."

<sup>3</sup> See my article on "Professor Freeman" in *Quarterly Review*, No. 349, p. 32.

<sup>4</sup> Wright considered that the original poem (now lost) was "written very soon after the middle of the thirteenth century", that is, only some thirty years after Fulk's death.

Conqueror's time, with an encounter between Payn Peverel and the foul fiend "en semblance Gogmagog" does not inspire confidence; and yet Wright claimed that "the general outline of the history is undoubtedly true, and many of the incidents are known from other evidence to have happened exactly or nearly as here related; but," he admitted, "it is equally certain that others are untrue and some are strangely misplaced."<sup>1</sup> And the author, we even read, "when his hero once took to sea, and left the English shores, seems to have considered that he was allowed free scope for his imagination."<sup>2</sup>

To take but one of Fulk's adventures oversea, we have his rescue of the daughter of the Duke of Carthage, "the fairest maiden who was known in the kingdom of Iberia". She had been carried off from her father's castle by a "flying dragon" to his eyrie. Fulk, taking with him his cousin Audolf de Bracy, scaled the mountain and saw the dragon flying in the air towards them, casting forth "smoke and flames most horrible" from its mouth. Even when Fulk had cut off its tail, the roaring monster clawed Audolf through his hauberk as he defended the damsel. We cannot tell to what extent the Shropshire folk believed such tales as these of men whom they and their fathers had known, but we must agree with Wright that probably Fulk's "adventures in Spain and Barbary were adopted from some of the current romances of the day, and they, therefore, are quite out of the pale of sober

<sup>1</sup> *The history of Fulk Fitz-Warine* (Warton Club), p. xiii.

<sup>2</sup> *Ibid.* p. xvii.

criticism ". That is one of the points we have to bear in mind.

Mr. Ward, in his interesting observations on this romance, goes further and names some of the romances which the author must have had in mind. It seems to me that this element points to a poem intended to arouse popular interest, as the story certainly did, rather than to a mere family chronicle, as Wright considered it to be, composed by a retainer of the house.

There is, however, another point, which has a more direct bearing on the *Geste* of John de Courcy. Wright observed that

Strangely enough, in that part of the history which comes nearest to the time of the narrator, the wild adventures of Fulk fitz Warine during his outlawry, it is assumed that King John was continually present in England, whereas we know from the most undoubted authority that he was during the whole time absent in Normandy. (p. XIII).

Mr. Ward wrote that

In like manner we may feel quite certain that Fulk did not capture King John once or twice ; and it is almost superfluous to examine the evidence afforded by John's Itinerary, which shows that he was in Normandy, instead of Windsor or Westminster, during the greater part of the outlawry, and that he was never at that time in Gloucester, as he is here represented.<sup>1</sup>

Returning for a moment to the *Geste* of Richard Cœur-de-Lion, we may detect a peculiar feature somewhat akin to a feature of great difficulty in the *Geste* of John de Courcy. The "secondary

<sup>1</sup> *Op. cit.* I, 504.



heroes," as Mr. Ward terms them, of the former romance are Sir Thomas de Multon and Sir Fulk Doyly, of whom the former seems, though known, to have been of relatively small note, while Fulk is a person so obscure, that his very identity is in some doubt. Yet these two men are Richard's chosen companions and are even placed on a par, as commanders of divisions, with the Kings of England and of France, when the host makes its fabled march against Nineveh and 'Babylon'! Mysterious as is the prominence thus falsely assigned to them,<sup>4</sup> it seems to present a striking parallel to that which in the other romance is assigned to Sir Amore 'Tristram,' who, though, in real life, comparatively obscure, and wholly unknown to the chroniclers, is made in the romance to share the struggles and the triumphs of his brother-in-arms, John de Courcy. The limelight is for John and for Richard; they are both paragons of valour; but in this the romances barely exaggerate what the chroniclers have told us. Where they startle us is in what they record of Sir Thomas, Sir Fulk and Sir Amore. The high position and the great deeds of Sir Thomas and Sir Fulk are sheer fiction: those of Sir Amore, I propose to show, belong to the same class.

<sup>4</sup> There is good ground for believing that in real life they were neighbours in Lincolnshire. Mr. Ward's industrious research has shown (*op. cit.* p. 946) that they held lands in the Lincolnshire Holland and were both charged with persecuting the monks of Crowland. But he overlooked the important entry in *Testa de Nevill*, p. 346, which localises for us the holding of Fulk "de Oyri", the more obscure of the two, as 14 carucates in Holbeach, Whaplode, and Gedney (between Spalding and the Wash), held of the Earl of Albemarle as about a quarter of a knight's fee. Thomas de Moulton ('Multon') was lord of Moulton, etc., held of the Prior of Spalding, just to the west of him.

For the wondrous deeds of John de Courcy we must start from the tantalising hint which Gerald gives us in the words with which he closes the eighteenth chapter of his *Expugnatio Hibernica*, Book II:—

Sed haec de Johanne summatim, et quasi sub epilogo commemorantes, grandiaque ejus gesta suis explicanda scriptoribus relinquentes, Dubliniam de cetero revertamur.

These words seem at least to point to an expectation that a history of John's deeds would be written and to a much fuller knowledge of them, from some source or other, than the writer's epitomised narrative would convey.

Whether there was already in existence an oral or written narrative of John's adventurous career—possibly in verse,<sup>1</sup> it is certain that such a narrative was eventually compiled, and that, although the MS. itself appears to be lost, it is possible to identify and recover a considerable portion of its contents.

Twenty-six years ago, in a paper on 'The Book of Howth'<sup>2</sup> I pointed out that the whole subject had been confused and obscured by Mr. Brewer's inexplicable blunder in treating as a "translation of the Conquest of Ireland, made by order of Primate Dowdall," what his own footnote distinctly showed to be a book containing the things *not* found in 'the Conquest of Ireland'!<sup>3</sup> These things I speak of as the *Geste*. In addition to such portions of this work as the "Book of Howth"

<sup>1</sup> As with "The song of Dermot and the Earl" or "L'Histoire de Guillaume le Maréchal."

<sup>2</sup> *The Antiquary* (1883), VII, 196-9, VIII, 21-24, 116-9.

<sup>3</sup> *Book of Howth*, p. xv.

incorporated (in the days of Elizabeth) we have the brief narrative from some 'Annals of Ireland' in 'the Laud MS.' printed by Mr. Gilbert in *The Chartularies of St. Mary's, Dublin* (Rolls Series), II, 309.

It is fortunate for us that the Lord of Howth kept entirely distinct those portions of his narrative which he reproduced from 'Giraldus' and those which he derived from the *Geste*. Had he endeavoured to combine or harmonise them, it would have been extremely difficult to disentangle his sources. Having, for instance, first given us (p. 79) the true story, from 'Giraldus,' of John's arrival in Ireland with William Fitz Audeline at Wexford, where they landed in the King's peace, he subsequently gives us (p. 92), from the *Geste*, the wholly fictitious version, according to which his first landing was not at Wexford, but at Howth; not with William Fitz Audeline, but with "Sir Amorey Tristram"; not in the King's peace, but in the midst of foes. This wresting of historical facts obviously points to a Howth influence, to someone's wish to connect the great and illustrious John as closely as possible with Howth and to claim a share in the famous deeds of a great historical character, for a man comparatively obscure, of whom we barely know the existence.<sup>1</sup>

That it was the Elizabethan lord who thus tampered with history, in order to aggrandise his ancestor, I do not believe for a moment. In the first place he would not have made his story contradict itself in this clumsy manner, but would

<sup>1</sup> Compare p. 273 above.

have endeavoured to harmonise it : in the second, he is quoting, as it seems to me, a narrative of early composition which bears the distinctive marks of a romance of chivalry. Breaking off abruptly from the text of the *Expugnatio*, at the point where Gerald hints that others may write of John's mighty deeds, he again charges the chronicler with wilfully disparaging John, whose wondrous feats he omitted.

Me-think it strange that Gerald Camerus, vicar, made no more account of Sir John Coursy, being the first Earl of Oulster and Lord of Conoghe. He neither gave him his name of honour, neither yet the twenty part of his right commendations, and for that he was refused by the said Sir John to be general vicar and secretary to the Prince at the coming of King (*sic*) John with whom he came. You may see what the world is, that vanity draweth truth aside, as it shall appear hereafter of other things which the said Camerus did for displeasure (p. 91).<sup>1</sup>

Then begins the fictitious history, as the *Geste* must have contained it.

This Sir John de Coursy being of the house of Bretayne by his mother's side, was one of the strongest men that then was in Europa. The valiantest, the fairest, the courtest, the soberest, the wisest, the fiercest in Europa was not his like.<sup>2</sup> When he was sent by the prince

<sup>1</sup> This charge—most unjust in view of Gerald's actual language about John—is made before (p. 84) and after (p. 117) the above passage. "This story and divers others of the thrice noble and worthy conqueror, that none his peer was in all Europe for the manliness and stalworthness with his own hand, I mean Sir John de Coursy, Earl of Ulster, was left out of the book written by Geraldus Cameranse, Archdeacon of Llandaff in England, and yet he was sent by the King with his son John to Ireland for the declaration of the truth." "This much Cameransse left out in his book aforesaid, with other things, more for displeasure than any truth to tell, the cause afore doth testify."

<sup>2</sup> Compare the glowing character of his contemporary, Richard I in the *Itinerarium*, II, 45.

into Ireland it was given him by patent so much as he had win in Ireland of any land, he and his friends whom he listed to prefer that should enjoy, without charge or tribute, for his reward of service, saving homage.

That said Sir John Coursey was in friendship with a worthy knight, Sir Amore Tristerame, now called Saint Larans, by reason the said Sir Amorey married his sister, and being in talk together in Our Lady Church in France in Rone, did agree together than what the said Sir John Coursey or he had win in any realm, either by service or other, should be divided between them, and upon this they companied together, as followeth, in France, in Angeou, Normandy, and England ; and now sent into Ireland, as is aforesaid, and took a bark and landed first at Houthe, where as a cruel battle was fought beside a bridge as they landed. Then Sir John Cowrsy, being sore sick, or some other impediment, aboard the ship was absent then ; and by reason that Sir Amore then and there was chieftain in the field, which stalworthly and knightly did use himself, this same was allotted to him for his part of the Conquest at the beginning, with other things, by the said Sir John Coursey.

The whole of this is sheer fiction. Apart from what has been said above as to its conflict with history, it is to be observed that Ulster, which was John's real conquest, was not divided with " Sir Amore," and that Howth, a comparatively small possession, was not John's to give, having nothing to do with Ulster.<sup>1</sup> As for Sir Amore

<sup>1</sup> Indeed the lords of Howth themselves knew quite well that they owed their enfeoffment at Howth to King John : for the ' Book of Howth ' itself contains this memorandum : " Memd. quod 13 die Febr. anno regni R. E. 14 (1285/6) venit Nicholaus Dominus de Howth in pleno Scaccario et..... juratus de veritate dicenda, recognovit quod antecessores sui feoffati fuerunt a Johanne rege Angliæ, avi prædicti R. Edwardi, de terris et tenementis suis de Houthe, unde dicit se habere cartam ipsius R. Johannis. Idem etiam N. recognovit quot prædicti antecessores sui facere consueverunt sectam ad comitatum Dublin. Et dicit quod ipse Nicholaus per corpus fecit hactenus servitium suum ad portam castri Dublin " etc. (p. 227).

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"Tristram," his descendant was sore put to it as to his real name. On his first appearance (p. 81) he is simply styled "Sir Amorey de Sancto Laurensino,"<sup>1</sup> but in the second instalment of his exploits (p. 91) he becomes "Sir Amorey Tristrame, now called Saint Larans." As a matter of fact, in actual records, he is "Amauricus de Houthe,"<sup>2</sup> and as the family called themselves, in later days, either St. Lawrence or Howth, the former, clearly, was their true surname, and the latter that which they derived from their estate.

"Tristram," therefore, we must owe to the romancer's invention alone; and the name is derived, of course, from the well-known "Sir Tristram" of the Arthurian cycle. The author of "The Book of Howth" may even have deemed him an ancestor, for on pp. 237-8 he copies out the tale of Sir Tristram and La Belle Isoude "in the time of King Arthur." The peerage books found it hard to explain how the name of Tristram came to be changed to St. Lawrence, but one used to read in 'Burke' that

a member of the house of Tristram, having the command of an army against the invaders of his native (*sic*) soil, attacked and totally routed them on St. Lawrence's day, near Clontarffe, and assumed, in consequence of a vow made previously to the battle, the name of the saint, which his descendants have ever since borne.

and one still reads in that 'authoritative' work (1909) that

<sup>1</sup> And on p. 84 we read of "Lyonell Saint Larans, Sir Amore's nephew", the name being thus recognised as that of the family. Moreover, on p. 92 we are told that at the first landing "there was slain of the Saint Larans at that battle seven sons, uncles and nephews of Sir Amore's."

<sup>2</sup> "Amauricus de Houede" in *Cartulary of St. Mary's, Dublin*. I, 77.

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The original name of this ancient family was Tristram and was changed to that of St. Lawrence.

Sir Amoricus or Amory Tristram, 1st Baron, the brother-in-law and companion of Sir John de Courcy, in 1177, effected a landing at Howth, defeated the Irish in a battle at the bridge of Ivoca, and obtained the lands and barony (by tenure) of Howth as a reward for his distinguished valour during the conflict. After this successful commencement, Sir Amoricus with Sir John de Courcy reduced the whole province of Ulster, etc., etc.

Even in the *Genealogical Magazine*, the special organ of Mr. Fox-Davies, one similarly reads that—

The family name of the Earls of Howth—whose residence the castle has been for six centuries—is (*sic*) Tristram. This surname was exchanged for St. Lawrence from the fact that Sir Amory Tristram, on St. Lawrence's day 1177, effected a landing at Howth and defeated the Irish in a battle, obtaining as a reward the lands and barony of Howth. The sword with which he fought still hangs in the hall of Howth Castle, etc.<sup>1</sup>

On the death, the other day, of the last Earl of Howth,<sup>2</sup> Sir Amore Tristram, accordingly, came well to the front, the press giving us as sober

<sup>1</sup> Vol. I, p. 383. Yet Mr. Fox-Davies strenuously insists that "the assumption of a name of mere motion is an improper assumption,..... inasmuch as no man has the right to assume a name without the licence of the Crown." (*Ib.* II, 447-8).

As to the sword, Selden (in his notes on the Poly-Olbion) asserts that the sword of (the fabulous) Sir Bevis "is kept as a relique in Arundel Castle." And the mystical *ensis Tristrami* was famous in mediaeval story. We read in De La Flamma how, in 1339, on opening the sepulchre of a King of the Lombards, a sword was found by his side; and on its deeply-gashed blade were found the words "Cel est l'espee de meser Tristant dont il oceist l'Amoryt de Irland."

<sup>2</sup> But not necessarily the last holder of the ancient barony. For my own discovery of an unknown Lord Howth (1643-9), on the Essex and Suffolk border, which may bear on the succession, see *Complete Peerage*, VIII, 425-6.

history, among the news of the day, an echo of Arthurian romance.

But why criticise the poor peerage-writers when the whole absurd story of the origin of the lords of Howth is even enshrined in the pages of the *Dictionary of National Biography*? To the pen of its assistant-editor, Mr. E. Irving Carlyle,<sup>1</sup> we owe the statements that

Their ancestor, Almaric de (*sic*) Tristram landed in Ireland with De Courci in 1176, and having distinguished himself by his conduct in the first engagement with the Irish at the Hill of Howth, received as his reward the grant of the district. He assumed the name of St. Lawrence after defeating the Danes near Clontarf on St. Lawrence's day, and fell in battle in 1189.<sup>2</sup>

One knows not whether to admire the more the 'de' grotesquely interpolated before the name Tristram or the crediting of the knight with defeating the Danes in the famous battle of Clontarf, which was fought—not on St. Lawrence's but on St. George's day—a hundred and sixty two years before he landed in Ireland<sup>3</sup> ("in 1176"). But this may be history "as she is taught" at Lincoln College, Oxford.

When Fulk Fitz-Warine went to France, we read, he took the name of "Amys del Boys," and was addressed as "Sire Amys." The writer surely took that name from the well-known French romance of Amys and Amylion.<sup>4</sup> Again, in Bar-

<sup>1</sup> Fellow and tutor of Lincoln College, and, as a Fellow of the Royal Historical Society, doubtless a distinguished historian.

<sup>2</sup> Vol. L, p. 153.

<sup>3</sup> This was the famous and only known defeat of the Danes at Clontarf.

<sup>4</sup> I do not find this point noted by the commentators on the Fulk romance.



bary he takes the name of "Maryn le perdu." Is it not possible that the name "Tristram" was similarly bestowed by the romancer on Amore when he went to Ireland like the fabled Sir Tristram?<sup>1</sup>

The note of Arthurian romance is heard again on p. 93, when "Sir John Coursey" laments the loss of "his brother-in-law, Sir Amorey."

"If my brother, Sir Amore were here, I could find in my heart to die with him. Alas! my dear brother; alas! that ever I knew him for *Sir Gawayn*<sup>2</sup> *was never to be compared above thee* in all thy doings.<sup>3</sup> Alas! alas! This day had not gone thus if he had been here."

Sir Amore was, as we might expect, the 'very perfect knight.'

God and his enemies could report that amongst a thousand knights Sir Amory might be chosen for beauty, stout-stomached, and stalworthiness; for he was stout and sturdy to his peer, and humble and full of courtesy to his inferiors, and nothing would yield but in the way of gentleness (p. 94).

One cannot insist too strongly that history is absolutely silent as to Sir Amory's battles, while the awkward fact that he does not appear among the barons of Ulster, the followers of John de Courci, is not disposed of by the lame device of asserting that his son "relinquished to religious houses the conquests of his father in Ulster"!<sup>4</sup>

<sup>1</sup> Hereward is said by the *Gesta* to have called himself Harold, for disguise, when shipwrecked in Flanders. But this is hardly a parallel.

<sup>2</sup> The tales of Sir Tristram and Sir Gawayn had both been drawn into the Arthurian cycle.

<sup>3</sup> Compare the allusion in the *Itinerarium* :—"Richard—to whom Roland himself cannot be compared—abode unconquerable and unwounded."

<sup>4</sup> *Burke's Peerage*.

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We will now pass from the glorification of Howth's petty lord to the tale of John de Courcy himself, his capture, imprisonment in the Tower, and release therefrom for the performance of his crowning deed.

The capture by treachery of John de Courcy at the instigation of his rival, Hugh de Lacy, is one of the two episodes for which we have the double "authority" of the 'Annals of Ireland' in the Laud MS. and of the 'Book of Howth.' These accounts deserve to be closely compared, because of the allegation by Mr. Gilbert, the editor of the former, that "English versions of several passages (in the Annals) identical with those in the 'Laud MS.' were, somewhat later, embodied in the Book of Howth." <sup>1</sup>

The 'Laud MS.' is described by him as of the 15th century. Having passed, in the following century, into the hands of the Howards, it was lent by one of them to Camden, who printed these "Annals" in 1607. Thenceforth their contents became widely known. <sup>2</sup> On the other hand, the "Book of Howth," compiled in the 16th century, remained in MS. till our own time (1871), when it was printed in volume V of *The Carew Manuscripts*.

A comparison of the two versions brings out the fact that either the "Annals" omit, or the Book of Howth has added, some of the facts.

<sup>1</sup> *Chartularies of St. Mary's Abbey* (Rolls Series), II, cxvi.

<sup>2</sup> *Op. cit.* p. cxiv et seq.

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### ANNALS OF IRELAND

postmodum feria sexta et  
Parasceve cum fuit inermis  
Johannes antedictus et nudis  
pedibus et in lineis in per-  
egrinatione visitando limina  
ecclesiarum, ut mos est,  
iret, capitur a suis proditio-  
se pro mercede data ac  
majori danda in futura et  
remunerandis, traditur Hu-  
goni de Lacy.

### BOOK OF HOWTH

Sir Hue de Lacy was  
commanded to do what he  
might to apprehend and  
take Sir John Coursy; and  
so devised and conferred  
with certain of Sir John's  
own men how this might  
be done; and they said it  
were not possible to take  
him, he being in his harness,  
unless it were a Good Friday,  
and told as his accustomed  
usage was, that day, he  
would wear no shield, har-  
ness, nor weapon, but would  
be in the church, kneeling  
at his prayers, in his live  
(line) clothes, after he had  
gone about the church five  
times barefooted. And so,  
as they devised, so came  
they at him upon the sud-  
den, and he had no shift to  
make but with the cross  
pole, and defended him till  
it was broken, and slew 13  
of them before he was  
taken; at which time two  
of his brother's sons were  
slain.

Now what are we to say to this story? With  
no wish to be dogmatic on the subject, I suggest  
that it is only a conventional episode of the hero-  
tale or romance. We are dealing, if my view is  
right, with one of the romances of the time, in

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which it was fitting that the hero should only be captured by foul means and in spite of prodigious valour. Samson, delivered bound to the Philistines, only to slay them with the jawbone of an ass, seems to have been present, more or less, to the minds of these romancers. In 'Sir Bevis', his father 'Sir Guy' is treacherously assailed while hunting, but slays a hundred of his assailants before 'Sir Murdour' can assassinate him; and 'Sir Bevis' himself, when quite unarmed, is assailed by twelve armed foresters, slays nine with the truncheon of a spear, and walks off unhurt. In 'Guy of Warwick' the 'felon' duke of Pavia sends sixteen knights to lie in ambush and intercept the hero "upon a mulet ambling," and already wounded; but only one of the knights escapes with his life. Again suddenly attacked when dining at King Florentine's table, Guy escapes in safety, after killing fourteen of his assailants. In 'Sir Triamour' the wicked 'Sir Marrock,' with eighteen followers, intercepts Sir Roger, the old knight, when without his armour, but fourteen of his assailants fall beneath his sword before 'Sir Marrock' spears him from behind in a sudden onslaught.

This brings us to the death of Hereward—a very real man, who became a hero of romance,—as told by Geoffrey Gaimar. We have two conflicting versions of his end, the author of the *Gesta Herewardi* making him die in peace, while Geoffrey's tragic tale is that which Kingsley follows. It is thus paraphrased by Freeman.

He had to keep watch within and without his house, and to plant guards when he was at his meals. Once

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his chaplain, Æthelward, on whom this duty fell, slumbered at his post. A band of Normans now attacked Hereward. He armed himself in haste; his spear was broken, his sword was broken; he was driven to use his shield as a weapon; fifteen Frenchmen lay dead by his single arm, when four of their party got behind him and smote him in the back....<sup>1</sup> Hereward, by a last effort, once more wielded his buckler with deadly effect, and the Englishman and the Breton fell dead together.<sup>2</sup>

In his appendix on 'The legend of Hereward' he guardedly wrote that

As to Hereward's death, there is nothing to make us choose between the story in the *Gesta* and the story in Gaimar, except that it is more likely that so elaborate a story as the latter should have been left out by one writer than that it should have been invented by the other.<sup>3</sup>

This is feeble criticism: Gaimar's story is not merely "left out" by the author of the *Gesta*; it is directly contradicted, we have seen, by the latter's version. That Gaimar's was "a tale worth the telling" was a point probably of more weight with a writer of Mr. Freeman's sympathies. Mr. Davis pronounces the mystery of Hereward's death "insoluble," and, in his Appendix on "The Hereward Legend," leaves the question open.

The great difficulty is that Gaimar gives an account of Hereward's end which is absolutely at variance with the *Gesta*... The natural course would be to prefer the story of Gaimar; but it is hard to suppose that a Croyland writer was mistaken about the death of a man who was buried in the church at Croyland.<sup>4</sup>

<sup>1</sup> "Qui l'ont féru par mi le cors,  
Od iiij lances l'ont féru."

<sup>2</sup> *Norman Conquest* (1871), IV, 487.

<sup>3</sup> *Ibid.* p. 809.

<sup>4</sup> *England under the Normans and Angevins* (1904), p. 525.

I venture to suggest that when we apply the methods of the higher criticism to the tales of "one whose mythical fame," as Mr. Freeman expressed it, "outshines all the names of his generation," when we remember that "with no name has fiction been more busy,"<sup>1</sup> Gaimar's story falls into place as a familiar incident of romance.

That we are here dealing, not with history, but with mere romance is shown by the tale that John, when captured, was sent to prison. The whole of this business is entered, in the 'Annals of Ireland,' under 1204;<sup>2</sup> and I have elsewhere examined in great detail John's movements at the time.<sup>3</sup> According to the "Annals of Loch Cé" there was a battle in 1204 between Hugh de Lacy and John de Courcy, in which the latter was taken prisoner, but released on taking the cross; and this statement, I have shown, is confirmed by the charter granting Ulster to Hugh, which tells us that Hugh "Johannem vicit et cepit in campo." According to "the Book of Howth" (after his capture, as above, by treachery)

And so he was sent to England, and was put in the Tower, to remain there in perpetual (*sic*), and there miserably was kept a long time without meat or apparel that any accmpt could be made of (p. 111).<sup>4</sup>

It is certain, from what we know of his movements, that John was not sent a prisoner to England,

<sup>1</sup> *Op. cit.* p. 455.

<sup>2</sup> *Chartularies of St. Mary's, Dublin*, II, 308-9.

<sup>3</sup> *The Antiquarian Magazine and Bibliographer* (1883), III, 305-310; IV, 177-181.

<sup>4</sup> According to the "Annals of Ireland" (*ut supra*): "Johannes Courcy judicatur carceri perp. quia fuit ante rebellus", etc.

and it is also certain that he gave hostages—sons of his barons—who were so sent.

This brings us to the climax of the *Geste*, to which John's imprisonment is the prelude.

The most celebrated of John's achievements is his bloodless triumph for England and its King against the champion selected to do battle for France. Its widespread fame is due to the fact that, according to the peerage-books, to 'popular' writers, and to countless newspaper scribes, the right of all the Lords Kingsale to remain covered in the presence of the Sovereign was a privilege bestowed on their ancestor John, "Earl of Ulster," by King John for this great service.<sup>1</sup>

I would make it clear at the outset that we have here two stories, of which one is quite distinct from the other and of much later origin. The first and older of the two is that of the single combat: the second and more recent is that of the grant to the victor, as the King's reward for his service, of the alleged privilege, for himself and his heirs, of remaining covered in the Sovereign's presence. The latter story is, in some versions, no mere complement, but an actual contradiction of the other, in which the reward given to John was the restoration of his Irish dominions.

Let us then deal first with the tale of the combat. The authorities for this are two: (1) The "Annals of Ireland" in the Laud MS.;<sup>2</sup> (2) The "Book of Howth." Here again we observe the grievous inaccuracy of Mr. Gilbert's statement that

<sup>1</sup> John was never Earl of Ulster, though so described in the Book of Howth and in the 'Annals of Ireland'.

<sup>2</sup> See p. 275 above.

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English versions of several passages (in the *Annals*) identical with those in the "Laud MS." were, somewhat later, embodied in the "Book of Howth."<sup>1</sup>

No one could compare the narrative in the "Annals," extending only to a page (pp. 309-310), with that in the "Book of Howth"—some two and a half pages, without observing that the latter contains much additional matter. And close examination reveals, further, that the two accounts differ vitally as to the cause of John's triumph. According to the "Annals" the French champion was so alarmed by what he heard that he would not put in an appearance:<sup>2</sup> in the quaint renderings by Philemon Holland and in Fuller's "Worthies" respectively, the story in the "Annals" runs:

### HOLLAND

But when the champion of France heard of his exceeding great feeding and of his strength he refused the combat, and then was the said seignorie given unto the King of England.

### FULLER

The Mounsieur hearing how much he had eat and drunk, and guessing his courage by his stomach, took him for a Cannibal, who would devour him at the last Course; and so declined the Combat.

In the "Book of Howth," on the contrary, the French champion is terrified, not by what he *heard*, but by what he *saw*.

The French King his champion came to the field, and did his duty of obeisance very reverent and courteous, and rested in the field half an hour.... As soon as the foreign champion saw him, his stomach could not abide

<sup>1</sup> *Chartularies of St. Mary's Abbey*, II, cxvi.

<sup>2</sup> "Sed quando gigas Francie *audivit* de nimia commestione et maxima fortitudine noluit pugnare, et tunc datum est dominium Regi Angliæ."



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the sight of Sir John Courcy, and refused utterly to have to do with him.

The tale of the encounter was thus embellished in the pages of *Burke's Peerage* ("Kingsale") :—

After his lordship (*sic*) had been in confinement about a year, a dispute happening to arise between King John and Philip Augustus of France, concerning the Duchy of Normandie, the decision of which being referred to single combat, King John, more hasty than advised, appointed the day, against which the King of France provided his champion ; but the King of England, less fortunate, could find none of his subjects willing to take up the gauntlet, until his captive in the Tower, the gallant earl of Ulster, was prevailed upon to accept the challenge. But, when everything was prepared for the contest, and the champions had entered the lists, in presence of the monarchs of England, France, and Spain (*sic*),<sup>1</sup> the opponent of the earl, seized with a sudden panic, put spurs to his horse and fled the arena (*sic*) ; whereupon the victory was judged, with acclamation, to the champion of England.<sup>2</sup>

Here again I confidently claim that the whole story is romance. On the one hand it is historically impossible ; on the other, the single combat—especially with a giant—was dear to romancers' hearts.

<sup>1</sup> The King of Spain is an additional embellishment. There was not even such a person in existence at the time.

<sup>2</sup> In spite of my own repeated criticism and of that in the *Complete Peerage*, 'Burke' persisted, year after year, in repeating the De Courcy story and asserting that "Lord Kingsale enjoys the hereditary privilege (granted by King John to De Courcy, Earl of Ulster) of wearing his hat in the royal presence," although it latterly admitted that John de Courcy seems to have died childless. It is only this year (1909) that the story is at last abandoned, the reader being only told that these events are "stated" to have happened.

In times to come, perhaps, 'Burke' may bring itself to recognise that, as I have always insisted, Lord Kingsale's pedigree cannot be ascertained beyond Patrick de Courcy (*temp.* Henry III), whose parentage has not been determined.

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- The 'battle' is introduced in the two versions as follows:—

### ANNALS

contentio facta est inter Johannem Regem Angliæ et Regem Franciæ propter dominium quoddam et quedam castella, lite pendente, Rex Franciæ obtulit gigan-tem seu pugilem ad pugnandum pro jure suo.

### BOOK OF HOWTH

It fortunèd after this that variance and debate did grow between King John of England and the King of France for a certain fortress or castle which the King of France wan from King John. Being often required that to be restored, the King of France said it was his, and offered his title to be tried by the body of a champion, whereunto the King of England more hasty than advised did agree.

Apart from the fact that the two Kings would not in real life have so settled their differences,<sup>1</sup> we have to find an occasion upon which they both could, as alleged, have been present at such an encounter. John, we know, had left Normandy before the close of the year 1203, and no possible occasion can be found after that; certainly no occasion on which the King could have sent, as alleged, to the Tower for John de Courcy as his champion.

But when we turn from history to romance, we have at once the genesis of the tale. The fate

<sup>1</sup> Strangely enough, a similar story is told of Burton (Latimer), Northants, in the *Testa* (p. 25), where it is said to have been held "de dono domini Regis Henrici avi (*sic*) domini regis Ricardi, qui pugnavit contra pugilem Regis Francie inter Gysorz et Trie." The place indicated is, of course, the great elm between Gisors and Trie, where Henry II used to meet the French King.

even of kingdoms rests upon a champion's prowess. In what was probably a lost romance or Old English ballad the peaceful conference, in 1016, of Cnut and Edmund Ironside, on an island in the Severn, became "a single combat between the rival Kings" for the realm of England, and developed, in the words of Mr. Earle, into "one of the established sensation scenes of history." For, as Mr. Freeman showed in his Appendix on the subject,<sup>1</sup> such serious historians as William of Malmesbury and Henry of Huntingdon and, later on, Roger of Wendover incorporated, with varying details, this single combat in their works. He did not, however, mention the interesting version recorded by Walter Map, who states that it was first intended to fight it out by champions,<sup>2</sup> or that of Geoffrey Gaimar.<sup>3</sup>

Again, in 'Fulk Fitz-Warine' the daughter of the Duke of Carthage offers to submit the issue between her and the King of Barbary to a single combat between knights, instead of the conflict of their hosts; in 'Sir Triamour,' Arradas, King of Aragon, seeks in vain for a champion worthy to be pitted against Marradas, the Emperor's giant, till he finds Sir Triamour just in time; and the same knight afterwards arrived just in time to fight, as the champion of Hungary, against the giant Bur-long. But "Guy of Warwick" is the great

<sup>1</sup> *Norman Conquest* (1870), II, 688-690.

<sup>2</sup> "fiatque pro bello duellum, et victor pugil domino suo regnum obtineat" *Distinc. V, cap. 4*. Walter was, of course, connected with that part of England.

<sup>3</sup> According to Map the two Kings actually fought on an island, first on horseback and then on foot. But in Gaimar, as in the Courcy story, when all was ready for the fight, a conflict was averted.

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exemplar. When Triamour (another of the name) has searched long and vainly for a champion to pit against the soudan's Amiraunt, the ferocious Ethiopian giant, Guy, disguised as a palmer, is found just in time. His memorable fight, however, with the Danish giant, Colbrond, presents the closest parallel to John de Courcy's triumph over the "gigas Franciæ," the champion of the French King.

Of that famous romance, "Guy of Warwick," Mr. Ward has observed in his *Catalogue of romances* that "the kernel of this romance was evidently the fight between the English and Danish champions" (I, 471). As he tersely describes it:—

Two northern kings, Anelaph and Gonelaph, now advance to Winchester, and summon King Athelstan to find any champion to oppose to their own, the giant Colbrand. Athelstan despairs of finding one: but an angel in a dream commands him to rise with the dawn, and to choose the first palmer who enters at the north gate. The palmer appears: he is poor and hungry, and worn with toil and trouble; but he is Guy, and he slays Colbrand with his own axe.

As is observed by Mr. Ward, "historically speaking, though the Danes sacked Winchester more than once, they did not approach it during the reign of Athelstan." He does not, however, insist as one could wish on the wholly fabulous character of the tale or on its conventional nature.

The story of this great fight with Colbrond, the Danish giant (*barbaricus gigans*), is told at length, from Girard of Cornwall's *Gwydo de Warwyck et uxor ejus Felicia*, in the Winchester *Liber de Hyda*,<sup>1</sup>

<sup>1</sup> pp. 118-123.

a book of the Abbey which arose on the alleged scene of the combat. Girard is a writer who has not been traced, but whose veracious chronicle, we find, included Edward the Elder's foundation of Cambridge University,<sup>1</sup> while the Hyde Chronicle itself records Anlaf the Dane's visit, in the disguise of a harper, to Æthelstan's camp.<sup>2</sup> In this version Æthelstan and his nobles are reduced to despair at Winchester for lack of a champion to battle for the realm against Colbrond, champion of the Danes. For three whole days they pray and fast and weep. Then an angel reveals to Æthelstan that a poor pilgrim at the city gate is the champion they despair of finding. This is Guy, sent, we read, like David to Saul against Goliath. The King implores him to fight; he makes sundry excuses; but at last, moved by prayers and tears, consents. Guy in due course cuts off the giant's head as he stoops; and the axe with which he did the deed remained at Winchester, as 'Colbrond's axe,' in the writer's day, to prove the truth of the tale.<sup>3</sup>

Mr. Edwards, the editor of the *Liber de Hyda*, made in the Preface (p. XLIII) to this, an official publication, the almost incredibly foolish remark that the "incident" is one "the substantial verity of which has been so encumbered with ancillary and fabulous accretions that the over-wise—and the

<sup>1</sup> *Ibid.* p. III.

<sup>2</sup> *Ibid.* p. 123. The same tale is told of Alfred, who visits in disguise the Danish camp, and of Hereward, who, disguised as a potter, visits the Norman camp.

<sup>3</sup> According to Trussell, it "was kept in the Cathedral vestry." Even so "the sword of Goliath the Philistine" was kept "behind the ephod" in the Tabernacle at Nob.

over-scornful—have come at length to treat it as fabulous altogether.” And in a footnote he spoke of the “wiser and more truly critical spirit” in which Mr. Milner, the (Roman Catholic) historian of Winchester, wrote of it that “To reject the *groundwork* of a history which is founded on so many ancient records and supported by immemorial tradition, as likewise by a great number of monuments still existing, or that existed until of late, savours of absolute scepticism.”<sup>1</sup>

When we compare the two stories, we find the despair of Æthelstan reflected in that of John.

The King of England called his Council to understand where his champion might be found that would take upon him this honour and weighty enterprise. Many places they sought and enquired of, but none was found that was able to serve so weighty a turn as this was. The King being then in a great agony, doubted more the dishonour than the hindrance of the matter.<sup>2</sup>

The part played by the angel in the story of Guy of Warwick is assigned in that of John de Courcy to “one of the Privy Chamber,” who at length “came to the King and told him that there was one in the Tower that in all the earth was not his peer if he might be had.” The King repeatedly but vainly implored John to fight for him, insisting that “the realm of England did rest and depend upon his stalworth and knightly doings.”

<sup>1</sup> Dr. Kitchin, Dean of Winchester, tersely dismissed the “legend” in the words: “Here the impossible Guy of Warwick, that English David, slew Colbrand, champion of the Danes,” etc. (*Winchester*, p. 22). Compare, for Mr. Milner’s proofs, vol. I, p. 315.

<sup>2</sup> *Book of Howth*, p. 112. So when “there went out a champion out of the camp of the Philistines, named Goliath..... Saul and all Israel..... were dismayed and greatly afraid.”

Even so Æthelstan, on his knees, had entreated Guy to fight, when the hero pleaded his age and infirmities. The captive John "was in great misery; his hair overgrew his shoulders to the waist, full of vermin, without any apparel that any account were to make of." But having consented at last to fight, not for the King, but for the realm of England, he bathed and ate and drank till he had regained his strength.<sup>1</sup> Then, "after all things as he required granted and had, he willed that his sword to be sent for that was within the altar of Doune in Ireland, for he would fight with no weapon but with the same sword."<sup>2</sup>

With the issue of the meeting I have dealt above. Here I will merely add that the writer seems to have supposed it was somewhere near the Tower, though it was only in France that the two kings could have been present. And if it was in France, the two kings can on no occasion have been together long enough for all the negotiations described as precedent to John's actual appearance in the field.<sup>3</sup>

Nevertheless, it is not only in the peerage books or the newspaper press that the story has been told as true. In the late Duchess of Cleveland's *Battle Abbey Roll* (1889)—a work by no means without merit or claims to critical value—we read of the 'hat' privilege that "Lord Kingsale enjoys it in right of his descent from John de Courcy, Earl of

<sup>1</sup> "et tunc recreatus est in esculentis et poculentis et balneis, et accepit virtutem fortitudinis suæ" ("Annals of Ireland.")

<sup>2</sup> *Book of Howth*, p. 113.

<sup>3</sup> Compare p. 290 above.

Ulster, to whom it was granted by King John." And then follows the whole story.<sup>1</sup>

And so we come to the later addition to the story we have now disposed of. In that story John's reward for his great service to the English Crown was the restoration of his lordship of Ulster.

## ANNALS OF IRELAND

Et Reges dederunt sibi  
munera magna, sed et Rex  
Anglie dedit sibi dominium  
suum, scilicet Ultoniam.

## BOOK OF HOWTH

The King of England did  
grant unto...him forthwith  
by his letters as much in  
Ireland as he would ask or  
did conquer himself; and  
so gave him all his domi-  
nions that before he had as  
Earl of Ulster and Lord of  
Connaught, and licensed  
him there to return, with  
great gifts there beside.

But the 'peerage' story, as it used to be recorded in the veracious 'Burke,' ran as follows:—

The king... not only restored the earl to his estates and effects, but desired him to ask anything within his gift, and it should be granted. To which Ulster replied that having estates and titles enough, he desired that his successors might have the privilege (their first obeisance being paid) to remain covered in the presence of his Majesty, and all future Kings of England, which privilege was immediately conceded.

Neither in the "Book of Howth" version, nor in those of Elizabethan days derived from the "Annals of Ireland," is there any trace to be found of this later story. Indeed, it is not till the days

<sup>1</sup> *Op. cit.* III, 238, where it is even stated that "John's sword and armour are preserved in the Tower."



of William III that the pretended privilege is alleged to have been asserted. As, however, I am calling it in question, it is but fair to say that we find due mention of it some half a century earlier. In Fuller's "Worthies" the tale of the encounter follows the Elizabethan version, but Fuller adds:<sup>1</sup>—

Hence it is that the lord Courcy, baron of Kingrone (*sic*), second baron in Ireland, claimed a privilege (whether by patent or prescription, charter or custom, I know not) after their first obeisance, to be covered in the King's presence, if process of time hath not antiquated the practice.

'Burke,' following Lodge, narrated the performance under William thus:—

This nobleman (Lord Kingsale), in observance of the ancient privilege of his house, appeared in the presence of King William covered, and explained to that monarch, when his Majesty expressed surprise at the circumstance, the reason thus:—"Sire, my name is Courcy; I am lord of Kingsale in your Majesty's Kingdom of Ireland; and the reason of my appearing covered in your Majesty's presence is to assert the ancient privilege of my family, granted to Sir John de Courcy, Earl of Ulster, and his heirs, by John King of England."

The Dutch monarch, doubtless, was as much "surprised" as the Hanoverian prince after him, when the official cockcrower gave his traditional performance.

It does not appear to have occurred to any one at that time to enquire if there was any evidence of such an hereditary grant, or whether John was Earl of Ulster, or whether the Lords Kingsale

<sup>1</sup> Probably about the year 1645.

could establish their descent from a man who died, as a fact, without issue. By 1762 the 'hat' was taken for granted; from Dublin George Montagu wrote to Horace Walpole that Lord 'Courcy'<sup>1</sup> had taken his seat in the Irish House of Lords.

Our peers need not fear him assuming his privilege of being covered, for, till the King gives him a pension, he cannot buy the offensive hat. In short he was bred a carpenter at Jamaica, and is come over and proved his descent, and to learn a new trade, and make a bow.<sup>2</sup>

According to the scathing note in the *Complete Peerage* (IV, 396-7) on the subject, the 'privilege' was actually asserted in the presence of Queen Victoria so late as 1859. Happily, however, there now prevails a more scrutinising spirit; for, even as I write, one learns from the press that although his Majesty had graciously consented to use at a Levée a chair alleged to have been used by Henry VII, it was not the chair, when the time came, that was sat upon. It was its owner, Mr. Dudley Baxter, who received a letter<sup>3</sup> informing him that "as the authenticity of the chair is disputed, and as his Majesty consented to sit in it mainly on the ground that it was used by Henry VII, which, apparently, is not the case," his Majesty was "unable to make use of it." Whereby Mr. Baxter learnt that—outside his Church—the authenticity of relics is considered to depend on evidence.

There can be little doubt that, as has been suggested, the idea of the alleged privilege is derived

<sup>1</sup> This was the old style of the peerage which is now "Kingsale."

<sup>2</sup> *8th Report Hist. MSS. App. II*, p. 115.

<sup>3</sup> Printed in the newspapers of June 7, 1909.

from one of those personal licences to wear the 'bonet' which were more frequent in Tudor days than would be generally supposed. For it is shown by the Forester example that the grant of such *personal* licence could give rise to a persistent belief that it created an hereditary privilege.<sup>1</sup>

These curious licences were not, so far as I can find, enrolled among the public records, and only those, consequently, are known of which the originals remain in private hands. I have here endeavoured to collect such as have come to light, although the list, probably, is not exhaustive. There may well have been many others, of which the memory is lost.

- (1) 24 Oct. 1512 (4 Hen. VIII). Walter Copinger, afterwards of Buxhall, Suffolk.<sup>2</sup>
- (2) 4 March 1515 (6 Henry VIII). Richard Wrottesley, Esquire, of Wrottesley, Staffs. (ancestor of the Lords Wrottesley).<sup>3</sup>
- (3) 6 July 1516 (8 Hen. VIII). Francis Browne, of Tolethorpe, Rutland (grandfather of Robert Browne, founder of the Independents).<sup>4</sup>
- (4) 15 Jan. 1517 (8 Hen. VIII). Richard Verney, Esquire, of Compton-Verney, War-

<sup>1</sup> Even since these words were written one reads in the 'Social and Personal' column of the *Evening Standard and St. James' Gazette* (4 August, 1909) that in the 16th century the Forester "family was of considerable importance, and Henry VIII attached a member of the house to his court, afterwards granting him the privilege of appearing covered in the royal presence. This quaint hereditary right remains to the Foresters to-day." In *Who's Who* it is similarly stated that "this family (*sic*) was granted..... the privilege of remaining covered in the royal presence."

<sup>2</sup> Hollingsworth's *History of Stowmarket* (1844), and Copinger's *History of the Copingers* (1884), p. 271, where the grant is printed and stated to be "still extant in the Glebehouse at Buxhall."

<sup>3</sup> Wrottesley's *History of the family of Wrottesley* (p. 254) and facsimile.

<sup>4</sup> See Fuller's *Worthies*, under Rutland, and account of the distinctive character of this grant below.

## 300 THE GESTE OF JOHN DE COURCY

wickshire (ancestor of the Lords Willoughby de Broke). <sup>1</sup>

(5) 22 Nov. 1520 (12 Hen. VIII). John For(e)ster, Esquire, (ancestor of the Lords Forester). <sup>2</sup>

(6) 7 February 1524 (15 Hen. VIII). Edward Montagu ("Mountegue"), "lernedman" (i. e. Serjeant at law), ancestor of the Dukes of Montagu. <sup>3</sup>

(7) 12 June 1527 (19 Hen. VIII). Humphrey Lloyd. <sup>4</sup>

(8) 26 July 1528 (20 Hen. VIII). "Thomas Wentworth of Wentworth, Esquyer," ancestor of the (Wentworth) Earls of Strafford. <sup>5</sup>

(9) 18 July 1543 (35 Hen. VIII). Dr. Gwent, Chaplain, (who was Archdeacon of London, and Dean of the Arches). <sup>6</sup>

With one exception, noted below, these licences are in English and in virtually uniform language. The grantee, "for certain diseases and infirmities which he hath in his hed," cannot conveniently "without his grete daunger bee discovered of the same," <sup>7</sup> and is consequently empowered "to use and were his bonet on his hed at all tymes and in all places, aswel in our presence as elleswhere at

<sup>1</sup> Dugdale's *History of Warwickshire*, p. 435.

<sup>2</sup> Grant printed in *Genealogist* (N. S.) XVIII, 218, from original in possession of the family.

<sup>3</sup> Grant printed in *Report on the MSS. of the Duke of Buccleuch*, I, 220, from the original in possession of the Duke, his descendant.

<sup>4</sup> Grant printed in Leland's *Collectanea* II, 679.

<sup>5</sup> Grant printed in *Strafford Letters and Despatches* (1739), II, 438.

<sup>6</sup> Printed in Leland's *Collectanea* II, 678. See also *Notes and Queries*, 8th Series, VII, 148.

<sup>7</sup> Wrottesley, Montague: "without his grete daunger and jeobardie." So also Wentworth. Forester is licensed "for certain diseases and infirmities which he hath in his hed;" Verney, Lloyd, Gwent, for divers "infirmities which he hath in his hed." Copinger "is so diseased in his head that", etc.

his libertie." <sup>1</sup> It will be observed that this permission is not confined to the royal presence: accordingly, "almaner our officers, justices and subgetts as well of spiritual preeminence and dignitie, as of temporall auctoritie" are commanded "to permitte and suffice (*sic*) hym so to do without any your lette chalenge or interuption to the contrary as ye tender our pleasure." <sup>2</sup> The 'bonet,' of course, is that which we see in the portraits by Holbein.

These "lettres" were headed by the King's sign manual and granted under the signet, which was represented, in the Wrottesley instance, by a wafer seal. There is, as I have said, one exception in the grant to Francis Browne, which describes itself as a Patent and is in Latin. After granting freedom from service on juries, as sheriff, as escheator, etc., it proceeds:—

Concessimus etiam... eidem Francisco quod ipse de cetero durante vita sua in præsentia nostra aut heredum nostrorum aut in præsentia alicujus sive aliquorum magnatum, etc.... quibuscunque temporibus futuris pileo sit co-opertus capite, et non exuat aut deponat pileum suum a capite suo occasione vel causa quacunque contra voluntatem aut placitum suum.

Turning now to another subject, the belief in the existence of a *chanson de geste* or lost ballad-cycle on Randolf, Earl of Chester, is based on the often quoted line in *Piers Plowman* (circ. 1377):—

<sup>1</sup> Montague. The wording is virtually exactly the same for Wrottesley, Copinger, Gwent, etc.

<sup>2</sup> Wrottesley, Montague, etc.

But I can rymes of Robyn hood and Randolf erle of Chestre.<sup>1</sup>

As nothing of the kind, however, is known, Mr. Ward,<sup>2</sup> followed by Dr. Brandin,<sup>3</sup> has drawn attention to the mention of Randolf, Earl of Chester, towards the end of the romance of Fulk Fitz-Warine. But this is comparatively slight.

In my opinion it is possible to identify a portion at least of the lost song of the great earl.<sup>4</sup> It has been in print, indeed, for more than two centuries, although no one seems to have recognised its true character. Nearly a column of Dugdale's *Baronage* (1675)<sup>5</sup> is occupied by a narrative, in italic type, introduced by these words:—

so did he approve himself a stout and faithful champion for Henry the Third, insomuch as the very preservation of that King, and raising him to his Father's throne, if we may give credit to an old Monk of Peterborough (Walter de Wittlessey, MS. penes Dec. et Cap. Petroburg.) may chiefly be attributed to him; whose relation touching the same, being not taken notice of by our ordinary Historians, I shall here insert.

The two features of this passage which lead me to deem it part of a romance, such as those we have discussed above, are: (1) that the earl is the central figure; (2) that the statements in the narrative are at direct variance with history. The subject of the narrative is the battle of Lincoln with what immediately preceded and followed it.

<sup>1</sup> See Hales, Percy Folio I, 258; Sweet, *Notes on Piers the Plowman*, pp. 136-7; Ritson, *Ancient Songs*, I, vii, xlvi.

<sup>2</sup> *Op. cit.* I, 517.

<sup>3</sup> *Fulk Fitz-Warine (The King's Classics)*, pp. xvii-i.

<sup>4</sup> Assuming, as everyone does, that it was not his namesake under Stephen who was meant.

<sup>5</sup> Vol. I, pp. 42-3.

We read that Louis "having landed himself in England..... advanced to Lincoln." Now Louis had landed in May 1216, and it was not till a year later that the battle of Lincoln was fought. But a far more important criticism is that Louis, whose presence at Lincoln is a feature of the narrative, is known to have remained in the south and not to have gone to Lincoln!<sup>1</sup> Nevertheless the narrative asserts that the earl

convened the rest of the Northerners; and being the chief and most potent of them, taking with him young Henry, son of King John, and right heir to the Crown, raised a puissant Army and marched towards Lincoln. To which place, at the end of four days after Louis got thither, expecting him, he came.

The earl is treated, here and throughout, as the only commander of the royal host, which is as contrary to fact as the statement that the young King was with him.

However, the romance proceeds thus with an episode absolutely impossible:—

To whom (*i.e.* the earl) the Earl of Perch, observing his stature to be small, said "Have we staid all this while for such a little man, such a dwarf!" To which disdainful expression he answered: "I vow to God, and Our Lady, whose church this is, that before to-morrow evening I will seem to thee to be stronger, and greater, and taller than that steeple." Thus parting with each other, he betook himself to the castle.

The Count of Perche did command the French troops on this occasion, but the interview alleged

<sup>1</sup> The late chroniclers, Walter of Hemingburgh and Trivet, imagined that he was present at the battle.

between him and the earl, the day before the battle, is, as I have said, impossible.

The narrative then proceeds to the battle on the following day.

And on the next morning the Earl of Perch, armed at all points except his head, having entered the cathedral with his forces, and left Louis there, challenged out our earl to battle; who no sooner heard thereof, but, causing the castle gates to be opened, he came out with his soldiers, and made so fierce a charge upon the adverse party that he slew the Earl of Perch and many of his followers.

Here we again have Louis represented as present and earl Randolf again treated as sole commander of the royal host. His actual part in the battle is a subject of some difficulty,<sup>1</sup> but there is no reason to suppose that it was he who slew the Count. The latter's death was caused by the point of a weapon penetrating his vizor, and it is assigned in the Marshal poem to Reinald Croc, though the Marshal himself seized his bridle, and was fiercely struck by the dying man upon his helm.

Le conte de Perche troverent  
Asez près devant le mostier  
Molt orguillos et molt très fier

. . . . .  
Li Mar.....

.....tendi la main  
E prist le conte par le frein  
Del Perche, et si sembla raison  
Por ço qu'il ert li plus hauz hom  
Qui i fust devers les Franceis

. . . . .

<sup>1</sup> See Prof. Tout's valuable article on "The Fair of Lincoln" in *English Hist. Rev.* XVIII, 250, 258.



Et a pris l'espeé a deus mains  
E fiert le Mar. Willielme  
Treis cops près a près sor le helme :<sup>1</sup>

The earl of Chester's next achievement, which follows the foregoing, is this :—

and immediately seising upon Louis in the church, caused him to swear upon the Gospel and Relicks of those saints then placed on the High Altar that he would never lay any claim to the Kingdom of England, but speedily hasten out of the realm with all his followers; and that when he should be King of France, he would restore Normandy to the Crown of England.

That this is all absolute fiction I need not insist. The narrative then ends with the earl posing as King-maker.

Which being done, he sent for young Henry..... and, setting him upon the Altar (!), delivered him seisin of this Kingdom, as his inheritance, by a white wand, instead of a sceptre, doing his homage to him, as did all the rest of the nobility then present.

Young Henry had been crowned at Gloucester seven months before (28 Oct. 1216) and would then have received the homage of his followers; nor was the earl of Chester ever in charge of him. The Marshal was *rector* (or *custos*) *regis et regni*, and the bishop, Peter des Roches, had personal charge of the lad. As the bishop, however, took an active part in 'The fair of Lincoln,' young Henry, probably, remained with Gualo the Legate; for Roger of Wendover tells us that, after the battle, William the Earl Marshal<sup>2</sup> returned to the

<sup>1</sup> ll. 16,704-16,748.

<sup>2</sup> i. e. Marshal of England and Earl of Pembroke.

King and brought them the news of the great victory.<sup>1</sup> It was similarly before the Earl Marshal that Louis, the following September, took the oath of renunciation alleged by the romance to have been extorted from him by the earl of Chester in May. Here we have again an excellent illustration of the way in which historical facts were wrested and distorted by romancers, in sheer defiance of the truth, for the glorification of their heroes.

<sup>1</sup> "ad regem reversus, retulit coram legato omnia quæ acciderant" (II, 219).

## HERALDRY AND THE GENT

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*Heraldry in decay—Arms as assertion of descent—The new doctrine  
The armigerous Gent—Nobility à prix fixe—No ‘privilege’ in  
grant of arms—Origin of class distinction—Tenures of land—  
What is a ‘gentleman’?—Origin of coat-armour—Alleged vanity  
—Medieval evidence—‘Musty’ parchments—Royal badges—The  
‘living’ heraldry—Heraldry as a study—A modern coat—‘The  
complete guide’—Arms of Ferrers—Crowns of the Magi—Con-  
fusion and contradiction—The white label—More confusion—  
Inaccuracy—The white swan—The Seymour augmentation—Other  
augmentations—Arms of St. Edmund—Arms of Edward the  
Confessor—The royal arms—Their use by Mowbray and by Holand  
—Use of royal crest—An imaginary grant—Lord Surrey’s offence  
The Howard augmentation—The Pelham augmentation—The  
rules of blazon—The Carlos coat—‘Debruised’ and ‘over all’—  
Simplicity of early blazon—More ignorance—Arms of London—  
Are they ‘recorded’?—A Scottish coat—Mayhew coat and  
pedigree—A blacksmith’s arms—‘Armorial families’ exposed—A  
‘Henry III’ coat—The voice of heraldry—The Evesham banners.*

There has raged for years past—for nearly fifteen years, I think,—a fierce, if intermittent strife on the subject of grants of arms. As is usually the case with institutions whose existence is artificially prolonged, the whole system of heraldry has become an anomalous survival. If the public cannot be induced to treat its existence seriously, its essential unreality and its “make-believe” are the cause. One has only to turn to such a modern work as the *Armorial Families* of Mr. Fox-Davies

to see the *novus homo*, the successful business man who has taken out a grant of arms, provided not only with the shield intended for his use at tournaments, but the closed helm that will mask his features when he sallies forth to war, and, perched above it, the crest that will proudly crown the whole.

It is with no desire to mock at this example of the "modern antique," this artificial survival from a glorious but dead past, that I dwell upon its incongruity. My object is to show that modern life has diverged more and more from the conditions in which heraldry had its rise and with which it was inseparably connected. The natural result followed. Filled no longer with the sap of life, heraldry withered and decayed; of heraldic art the decadence was rapid and eventually complete; heraldic practice became a tissue of irregularities and confusion. As a matter of fact, the period of decay may be said to have begun about the time when the Heralds' College assumed control according to Mr. Fox-Davies. He holds that "speaking broadly, regularised and *recorded* heraldic control as a matter of operative fact dates little if any further back than the end of the reign of Henry VIII".<sup>1</sup> Under that king the tournament, with which heraldry was so closely associated, finally died out. It had only been kept alive for some time with difficulty. Indeed the victory on Bosworth Field had rung the death-knell of true heraldry when it ended "the Wars of the Roses." The "new monarchy" of the Tudor line was

<sup>1</sup> *The Complete Guide to Heraldry*, p. 457.

essentially hostile to that feudal spirit with which the shield of arms had risen, and with which it waned and fell.<sup>1</sup>

And then came "the deluge."

The old baronage was all but extinct; the new men of the Tudor age, enriched by trade or by abbey's spoil, were pressing and crowding to the front. Custom and tradition alike required that, when they had risen, they should have their ancestors and their arms; and there were those who provided them with both. The second half of the sixteenth century, and the first half of the seventeenth, were for genealogy and for heraldry a black period indeed. It was then that began the pernicious practice, which has proved so fruitful a cause of trouble, of new men striving to connect themselves with ancient houses bearing names more or less similar to their own. Heralds themselves, unfortunately, were among the greatest sinners, from the 'Wriothesleys' and the 'Dethicks' of Tudor days to Bysshe, Garter King of Arms, in the time of the Commonwealth.

Nor was it only the *novus homo* who annexed the arms of another house; the ancient race of the Gerards of Bryn took, and still bear with full heraldic sanction, the arms of the great house of Fitzgerald, from which they tried to claim descent,—the undifferenced arms of the Duke of Leinster.

<sup>1</sup> This, I find, was also the view of the late Henry Bradshaw. "One of his theories, which he again and again reiterated, was that the science of armory died with the conclusion of the Wars of the Roses and the foundation of the College of Arms."—Letter from W. St. John Hope to G. W. Prothero in the latter's *Memoir of Henry Bradshaw* (1888), p. 371. Boutell admitted "the degenerate condition of Heraldry under the second Tudor Sovereign" (*Heraldry*, p. 242).

The Fitzherberts of Tissington, among the baronets, discarded similarly the ancient coat of their own parent stock, to assume, absolutely undifferenced, that of the senior line of the baronial house of Fitz-Herbert, with which they had no more connexion than I have.<sup>1</sup> Well may Mr. Oswald Barron say that "the ingenuities of the official guardians of heraldry have reduced the arms of our English families to a welter of contradictions and misapprehensions."<sup>2</sup> It is true that by "ingenuities" the writer may refer partly to those "armorial scandals," as he terms them, caused by granting, in accordance with "an evil tradition," not indeed the exact coat borne by another family, but "a colourable imitation" thereof,<sup>3</sup> sufficiently near to suggest that kinship which in England it would once have denoted and in Scotland would still denote. But the great Blackstone, at least, did not mince his words and thus described the heralds' share in heraldry's decline and fall:—

The marshalling of coat-armour, which was formerly the pride and study of all the best families in the kingdom, is now greatly disregarded and has fallen into the hands of certain officers and attendants upon this court called heralds, who consider it only as a matter of lucre, and not of justice, whereby such falsity and confusion

<sup>1</sup> Both the coats thus assumed are recognised, it will be found, as officially valid in the *Armorial Families* of Mr. Fox-Davies. It is amusing to read, in the introduction to that work, of such assumption by one family of the arms of another family of the name, that: "At the present time, at the close of the 19th century, this same abuse runs riot, and now, as then, it is in the forefront, and the most prominent of heraldic follies..... beside this particular illegality all others seem but as mere peccadilloes" (p. vi). The writer, one must suppose, did not know enough of heraldry to perceive that "this particular illegality" is well illustrated by these two 'legal' coats.

<sup>2</sup> *The Ancestor*, VI, 174.

<sup>3</sup> *Ibid.*, pp. 169-170. The heralds will hardly thank Mr. Fox-Davies for his revelations on the subject (*Complete Guide*, pp. 116, 206, 516).

have crept into their records (which ought to be the standing evidence of families, descents, and coat-armour) that, though formerly some credit has been paid to their testimony, now even their common seal will not be received as evidence in any court of justice in the kingdom.

Heraldry having been reduced to this parlous state, what was the worth of a coat of arms? What meaning was left to it? Well, it represented an assertion that one belonged to a certain family: it was understood to denote that, and nothing more than that. If you could prove your descent from that family, you were merely asserting the truth. If, on the other hand, you could not do so, you were guilty, to that extent, of more or less conscious deception.

Mr. Fox-Davies puts the case thus in his *Complete Guide to Heraldry* (1909):—

*By the use of a certain coat of arms, you assert your descent from the person to whom those arms were granted, confirmed, or allowed.*<sup>1</sup> That is the beginning and end of armory. Why seek to make it mean more (p. 24).

Why indeed? But that, we shall see, is precisely what the writer has striven to do. If my readers will bear in mind this point of *assertion of descent*, they will grasp the real issue; they will find it the touchstone by which to determine whether arms are borne with intention to create a false impression or not.

Whether the arms had in the first instance been formally “granted, confirmed, or allowed” was not considered a point of any importance. In the

<sup>1</sup> The italics are his own.

first place it did not affect the *assertion of descent* at all; in the second, it was common knowledge that a grant of arms could be obtained on payment of the usual fees by anyone of decent position who cared to do so. That a man's social position was determined or even affected by the question whether he had paid these fees was a doctrine that had not entered the minds of men. As for the view that this money payment constituted the dividing line between the "plebeian" and the "noble," such a conception would have aroused ridicule; ridicule alone could have saved it from being denounced as vulgar.

It is asserted, indeed, by Mr. Fox-Davies that the discontinuance, in the last century, of the custom of painting upon carriages large coats of arms is due to "the modern craze for ostentatious non-ostentation (the result, there can be little doubt, in this respect of the wholesale appropriation of arms by those without a right to bear these ornaments.)"<sup>1</sup> This only illustrates his inability to understand the feelings of a man of good family. There are peers, baronets, and county families to whom he would deny the "right to bear these ornaments," while he would proclaim the "right" of the newest of new men,—even of a music-hall proprietor whose coat proclaims his calling. It is the use of arms, according to him, by the former, not by the latter class which has made them unfashionable. This is a view which would appeal only to men who wear what he rashly describes as "the ordinary elastic-side boots . . . . of everyday life."

<sup>1</sup> *Complete Guide*, p. 399.



Such, I repeat, was the state of things. So far as anyone troubled his head about heraldry at all, the only point that could be said to matter was the wrongful assumption of the arms of one family by the members of another. And even this was probably deemed, by most persons, a venial offence. Those of us, however, who cared for genealogical truth would gladly have seen this abuse denounced and checked.

But it was not for this that was unfurled the banner of the new crusade. Bursting, as it were, arm-in-arm, upon the gaze of a puzzled public, half-astonished, half-amused, Mr. Fox-Davies and the loud-mouthed 'X' preached and shrieked the new gospel, proclaimed the glory of the armigerous Gent. An abler pen than mine has dealt with that new gospel and has made its tenets the theme of delicate, but deadly satire.<sup>1</sup> Broadly speaking, these twin prophets—of whom many have seen in one but the astral body of the other—set themselves to promulgate the doctrine that society was cleft by a line of which no one hitherto had dreamed. On the one side of it were the wretched "plebeians": on the other were the "gentlemen of coat armour." Whether you were among the sheep or the goats, whether you stood within or hopelessly without the pale, depended simply and solely on whether you possessed a coat of arms registered (or recorded) at the Heralds' College.

To do Mr. Fox-Davies justice, he had the

<sup>1</sup> "The genuinely armigerous person." By Oswald Barron (*Ancestor*, VI, 155 *et seq.*) See also, upon this subject, "Arms and the Gentleman," in *Cont. Review* (1899) LXXVI, 249 *et seq.* and "Order Arms" in the *World* of 16 August 1899; also *Monthly Review*, No. 9, pp. 110-111.

courage of his opinions. He was careful to explain that even a peer who failed to pass this new test was, however ancient his house, not a gentleman. Among "plebeians" he boldly classed even "prominent people whose social position is undoubted;" he denounced them as "bogus pretenders," and, regardless of legal consequences, proclaimed, in his wild excitement, that these persons "openly break every law in existence." On the other hand he clasped, as it were, the Armigerous Gent to his bosom. The man who had taken out a grant of arms, whatever his birth, breeding, or ancestry, was hailed as the only true "gentleman," was hall-marked and stamped as such in a work produced for the purpose. Nay, it was even explained to this fortunate person, to his joy, that he was "the first holder of the lesser nobility of that creation in precisely the same manner as the first Peer is a Peer by patent."

It should have, for this excited writer, the effect of a cold douche when, in his *England and the English* (1909), Mr. Price Collier writes:—

Practically the only people either in England or America whom one hears talking much of what it is, or what it is not, to be a gentleman, are they who secretly suspect their own claims to the title. The very first requisite of a gentleman is that he should have forgotten at least an hundred years ago that he is one (p. 207).

It is wittily and truly put. But the requisite is one which cannot be fulfilled by many "gentlemen of coat armour;" and it has the supreme advantage that no fees can buy it.

We can further appreciate the boldness of this

novel doctrine when we remember that the only style coveted by men was that of Esquire, and that the humbler style of "gent." lower not only in the social, but in the formal scale of precedence, was one that they were eager to escape. Mr. Fox-Davies has set himself to alter all that : an 'Esquire' to him is but of small account ; he has made himself the Apostle of the Gent.

It is needless to recapitulate the grotesque consequences of the doctrine preached by Mr. Fox-Davies or to dwell on its inherent absurdity. It would erect, as the *World* expressed it, "a standard of social and personal measurement which makes plebeians of men of county family and established position, and gentlemen of all the 'bounders' in the kingdom who have a few pounds to spare to the accommodating fossils of Queen Victoria Street."<sup>1</sup> I have dealt in another place with 'X' and Mr. Fox-Davies<sup>2</sup> and will only add here that their ludicrous doctrine as to "gentleman" is rejected by the very authorities whose voice, in these matters, they have loudly proclaimed to be law. The Crown assigns the style of "gentleman" to all those to whom it grants commissions, totally regardless of whether they possess coats-of-arms, legal or other ;<sup>3</sup> and the heralds, on whose "sole authority" these writers insist, formally accord the style "gentleman" to persons expressly recognised

<sup>1</sup> *World*, 16 August, 1899. I disclaim all responsibility for this description of the heralds, which I should not dream of applying to them, and for which they have to thank the absurd doctrine of Mr. Fox-Davies and his school.

<sup>2</sup> *Studies in Peerage and Family History*, pp. xv, xix-xxix.

<sup>3</sup> "Gentility is merely hereditary rank, emanating, with all other rank, from the Crown, the sole fountain of honour." *The Complete Guide to Heraldry*, p. 23.

to be not entitled to arms, as is shown by a document printed by 'X' himself!

The point which I now wish to make is that, in his latest work, Mr. Fox-Davies, we shall find, has been driven at last from his position: he is practically in full flight; he is fairly beaten from the field.

For what is the answer to all his endeavours to exalt the effect of a grant of arms by representing it as a high privilege, a concession by the sovereign, an act of Grace? It is that the matter does not come before the sovereign at all, but is simply a matter of paying certain fixed fees. There was never any attempt to surround the matter with mystery till 'X' and Mr. Fox-Davies set themselves to exalt the privileged position of the Armigerous Gent, the former even audaciously asserting that "the cases of a Patent of Arms and a Patent of Peerage are identically the same," and that "if a coat of arms granted by Patent is to be stigmatised as bought from the Crown, then of a surety every Peerage granted by Patent is equally 'bought.'"<sup>1</sup> I term this statement audacious because the writer must have known perfectly well that the man who can obtain a grant of arms by paying certain fees would vainly endeavour to obtain a Peerage by paying the fees for its Patent.

The matter, as I have said, has never been a mystery: it is at most a *secret de Polichinelle*. So far back as the days of Elizabeth, Harrison described how a man "shall for money have a coat and

<sup>1</sup> *The Right to bear Arms*, p. 167.

arms bestowed on him by Heralds.”<sup>1</sup> In the next century the quaint Fuller tells the story of “an ancient esquire’s” retort to one who taxed him with his plain coat of arms: “I must be fain to wear the coat which my great great grandfather left me; but had I had the happiness to have bought one, as you did, it should have been ‘guarded’ after the newest fashion.”<sup>2</sup> So also in the next century, 1724, a writer who exalted the heralds and their College, and claimed that “Heraldry is observed with greater strictness and niceness here than in any country where I have been abroad,” ended his account of the College with the perfectly frank statement that —

Such as have a mind to purchase a Coat of Arms at the Heralds’ Office may see the method of it in Dr. Chamberlain’s *State of England*.<sup>3</sup>

Passing to our own time we find Mr. Hutton writing with equal frankness:—

It is a matter of common knowledge that payment of the fees claimed will always secure a grant, apart from the rule, now somewhat meaningless, . . . . . that grants are not made to retail shopkeepers.<sup>4</sup>

But such frankness would be obviously fatal to the doctrine of ‘X’ and Mr. Fox-Davies. It would take, in homely language, “the gilt off the gingerbread.” The Armigerous Gent who is taught to believe that the Crown has selected him for an honour “in precisely the same manner as the letters patent creating a peerage constitute a

<sup>1</sup> *A description of England*.

<sup>2</sup> *Worthies of England* (1840) I, 65-6.

<sup>3</sup> *A journey through England*, I, 238.

<sup>4</sup> *A reformed College of Arms in Cont. Rev.* (July 1900), p. 98.

patent of what we in England commonly and colloquially call nobility,"<sup>1</sup> and that he is "the first holder of the lesser nobility of creation in precisely the same manner as the first Peer is a Peer by Patent," would surely be aghast if he were frankly told that "plebeians" on whom he looks with scorn could enjoy the same honour by merely paying the fees, and that the Crown, in their case as in his, would have no more to do with the selection than "the man in the moon."

As Mr. Oswald Barron has said in reply to Mr. Phillimore, who claims that grants of arms "create *nobiles minores*," and who speaks of the Sovereign granting "titles, honours, and arms,"

Let Mr. Phillimore choose his candidate for, leaving peerages alone, the modest honours of a knighthood, or of the fifth class of the Victorian Order. Let us on our side choose a candidate for the honour of a grant of arms, and let the relative success of our candidates demonstrate the vital difference between a grant of arms and those honours which are in the sovereign's gift, whose distribution is within the sovereign's knowledge. The difference lies in the fact that the one is obtainable on a money payment by a suitable candidate whilst the other is not.<sup>2</sup>

Let there be no misunderstanding as to the point at issue. There is no "sneer" at the payment of fees to heralds for a grant of arms. To grant arms is part of their functions, and, if a man cares to take out a grant, it is perfectly fitting and proper that they should receive their fees. 'Largesse,' indeed, is a great tradition; it is, beyond dispute, a

<sup>1</sup> *The right to bear Arms.*

<sup>2</sup> *The Ancestor*, VI, 158.

golden link which unites the heralds of to-day to those of the Middle Ages. There is no 'sneer' at grants of arms; what we ridicule is the attempt to confuse them with the grant of titles, the absurd endeavour to exalt the Armigerous Gent as a "Noble." To quote from a previous work:—

"What I am exposing is not the practice of granting arms, but the effort to persuade the public that the grant is a special privilege, when it is notoriously obtained by the mere payment of cash." <sup>1</sup>

And now let us see Mr. Fox-Davies, in his *Complete Guide to Heraldry*, driven to admit the fact.

#### ARMORIAL FAMILIES

I would remind those with the sneer ready to their lips that Arms are a mere matter of payment of fees, that it is not so . . . . . A grant of Arms, which is a concession of grace by the Sovereign, is a Patent of Gentility from the Crown, from which is all honour.

#### THE COMPLETE GUIDE

So long as the possession of arms is a matter of privilege, even though *this privilege is no greater than is consequent upon* <sup>2</sup> *payment of certain fees* to the Crown and to its officers, for so long will that privilege possess a certain prestige and value though this may not be very great. (p. 23).

One often hears the remark, 'Oh, but anybody can have a coat of arms by paying for it.' A more mistaken idea could not exist, etc.

Providing a person is palpably (*sic*) living in that style and condition of life in which the use of arms is usual, subject always to the

<sup>1</sup> *Studies in Peerage and Family History*, p. XXIX.

<sup>2</sup> The italics are mine.

Earl Marshal's pleasure and discretion, a Grant of Arms can ordinarily be obtained upon payment of the usual fees (p. 589).

It is true that the *Complete Guide* harps upon the word "privilege": we read that "The possession of arms is a privilege the Crown is willing should be obtained upon certain terms by any who care to possess it, who live according to the style and custom which is usual amongst gentle people"... "Arms have never possessed any greater value than attaches to a matter of privilege" (p. 23). But this is a sheer contradiction in terms, though it is charitable to presume that the writer is not conscious of the fact. That which can practically be obtained "by any who care to possess it" cannot be described as a "privilege."

"Providing a person is palpably" attired in evening dress, "subject always to the" Manager's "pleasure and discretion",<sup>1</sup> admission to the stalls of a London theatre "can ordinarily be obtained upon payment of the usual" price; but it would not occur to one to look upon such admission as a "privilege," a privilege possessing "a certain prestige and value." Nor has anyone produced a work on *Stall-going families* in which Roman type shall be rigidly restricted to those who have secured admission to that portion of the house.

Probably there never was a time when any real privilege, any little social distinction, was the subject of more struggle and intrigue, or was, if

<sup>1</sup> In a well-known case admission was refused to a leading critic.



gained, more jealously prized than it is to-day. Why then is there not a rush to enter *à prix fixe* the ranks of the "lesser nobility," of the noble "caste"? Why has a man to be goaded and lashed in order to compel him to do so? Why is it necessary for Mr. Fox-Davies "to insult him publicly in black and white" (the expression is his own) before he will take any steps? The answer of course is obvious enough; it is that a grant of arms is *not*, as alleged, a "privilege." As I observed in my previous work:—

This is the essence of the case. A peerage is the object of ambition because few can obtain it; a grant of arms is of no account because nobody values what "anyone" can obtain. And no amount of rhodomontade can alter or obscure the fact.<sup>1</sup>

By "anyone" I mean, of course, the class of man whom Mr. Fox-Davies sets himself to "insult publicly" as a "plebeian," and whose application for a grant of arms—involving his change from a goat to a sheep, in that writer's "armorial" flock—would, so far from meeting with objections, be actually welcomed by a herald.

The *Complete Guide* appears to show that its author is changing his position, that he is at last being forced to recognise what is obvious to everyone else, namely that the grant of a coat of arms is not, as he affirmed, the origin and cause, but the consequence of "gentility." In other words, a grant of arms is made *because* a family is "living in that style and condition in which the use of arms is usual" . . . . . "according to the

<sup>1</sup> *Studies in Peerage and Family History*, p. xxvii.

style and custom which is usual amongst gentle people: " <sup>1</sup> it does not change their social position or raise a man to the rank of a "gentleman" (whatever that may be) in spite of all the editions of *Armorial Families* that have ever issued from the press.

Therefore by the use of arms (asserting no false descent) a man merely affirms that he enjoys a certain social position, by no means high; and if he does actually enjoy it, and could have arms for the asking, he is affirming nothing that is not true. But one is not surprised that Mr. Fox-Davies, in his effort to prove the contrary, has landed himself in such confusion that he actually contradicts himself, on different pages of *The Complete Guide*, as to the social position conferred by a coat of arms. We are first told that a coat has a meaning in the eyes of society, and then that it is now of no account.

the display of a particular coat of arms has been the method, which society has countenanced, of advertising to the world that one is of the upper class or a descendant of some ancestor who performed some glorious deed to which the arms have reference (p. 22).

In England few indeed care or question whether this person or that person has even a coat of arms; and in the decision of Society upon a given question as to whether this person or the other has "married beneath himself," the judgment results solely from the circle in which the wife and her people move (p. 618).

It is greatly to be feared, from his own standpoint, that the second of these views is sound.

<sup>1</sup> See p. 320 above.

Let us, however, hear him further on the subject he has made his own, the subject to which, as is well-known, he has long devoted his attention. The title of the second chapter of his book is "The status and the meaning of a coat of arms in Great Britain." It includes, as we might expect, his views on the origin and the true meaning of the word 'gentleman,' a matter on which one has long looked for entertainment from his pen.

We read at the outset that—

It is necessary to go back to the Norman Conquest and the broad dividing lines of social life in order to obtain a correct knowledge. The Saxons had no armory, though they had a very perfect civilisation. This civilisation William the Conqueror upset, introducing in its place the system of feudal tenure with which he had been familiar on the Continent.

Wondering how a "perfect civilisation" could be "upset" by a mere change in the principle of land-tenure, we hasten on in search of "a correct knowledge." On the "feudal system", apparently, the author is quite at home. "Liability of (*sic*) military service," we learn, "according to the land they held," was the real test which marked off, by a sharp line of cleavage, the "gentle" from the "simple," the upper from the lower class.

Every man who held land under these conditions—and *it was impossible to hold land without them*<sup>1</sup>—was of the upper class.... apart, and absolutely separate from the remainder of the population, who were at one time actually serfs, and for long enough afterwards, of no higher social position than they had enjoyed in their

<sup>1</sup> The italics are mine.

period of servitude. This wide distinction between the upper and the lower classes, which existed from one end of Europe to the other, was the very root and foundation of armory. It cannot be too greatly insisted upon (p. 19).

What "cannot be too greatly insisted upon" is that Mr. Fox-Davies does not understand his subject. Tenure by military service is, as it happens, a matter on which my own authority is so far recognised that the views I have put forward are now accepted by historians.<sup>1</sup> But this was only one of the tenures by which land could be held. Mr. Fox-Davies, "barrister-at-law," has evidently never even heard of tenure by serjeanty, tenure in socage, tenure in frank-almoyn. The statement that "it was impossible to hold land" otherwise than by military service does but prove the writer's ignorance: the assertion that those who did not so hold were all of servile status is merely grotesque.

Let us take a concrete instance that will drive the point home. A great and ancient county family, still lords of their *stammhaus*, the Okeovers of Okeover, had for their ancestor, in the days of Stephen, a certain Ralf Fitz Orm. Seated in Staffordshire on the Derbyshire border, he held estates at Okeover, Ilam, and Stretton, under the Abbot of Burton, Mayfield under the Prior of Tutbury, and Callow under Ferrers, Earl of Derby. But, writes General Wrottesley, in his history of the house, the family "had carefully shielded themselves from any tenure which savoured of knight's service and the feudal burdens which were incident

<sup>1</sup> See my papers on "The introduction of knight-service into England," in *English Historical Review* and *Feudal England*, and compare *History of English Law* (1895), I, 238.

to it.”<sup>1</sup> According therefore to Mr. Fox-Davies, Ralf was of servile status, a member of “the lower class.” Need I add that this conclusion reduces his argument *ad absurdum*? Ralf, as a matter of fact, married “the sister of Walter de Montgomery, one of the knightly tenants of the Earls of Ferrars,” and “obtained with her the valuable manor of Snelston in Derbyshire.”<sup>2</sup>

But the author, confident as ever, has in store for us a greater surprise. He explains to us the true origin of that tiresome word “gentleman,” the “preposterous prostitution” of which again moves him to wrath. One remembers the distressing experience of ‘X’ “in a public-house,” which led him to denounce the application of that term—

in an idiotic manner to anyone whose education, profession, or perhaps whose income raises him above the lower level of ordinary trade or menial service, or even to a man of polite and refined manners and ideas.

This last application of the term would indeed be “idiotic” to ‘X’!

To continue:—

Such an idea is absolutely wrong. I have myself heard and seen a drunken chimney sweep come to blows in a public-house on being informed he was not a gentleman.<sup>3</sup>

‘X,’ one fears, was mixing in rather low company!

Let us turn to the latest revelation, to the discovery of Mr. Fox-Davies (p. 20):—

<sup>1</sup> *The Okeovers of Okeover*, p. 9. Compare my observations on these non-military tenures in “The Burton Abbey Surveys,” (*Eng. Hist. Rev.* XX, 275 *et seq.*)

<sup>2</sup> General Wrottesley *ut supra*.

<sup>3</sup> *The right to bear arms.* By ‘X’.

The word gentle is derived from the Latin word *gens* (*gentilis*), meaning a man (*sic*), because those were *men* who were not serfs. Serfs and slaves were nothing accounted of . . . . there were but the two classes in existence, of which the upper class were those who held the land, who had military obligations, and who were noble, or in other words gentle.

It is, one would imagine, needless to inform an educated man that *gens* does *not* mean "a man," that it means a clan or family, and that Horace means by "*sine gente*" one who is (as we should say) "of no family." But then our eyes rest upon the cover of Mr. Fox-Davies' volume, gorgeous with a coat of arms, and we remember 'X's vigorous protest against the "idiotic" association of the word 'gentleman' with education; for, as he proceeds to remind us, "nothing a man can do or say can make him a gentleman without formal letters patent of gentility—in other words, without a grant of arms," etc. etc.

Again we return to our teacher. Having shewn us the two classes and explained how they were severed, he advances to his next discovery, the reason why the use of "arms" was co-extensive with the upper class. I will not inflict upon my readers the sentences which, to me at least, are faintly reminiscent (if it is not irreverent to say so) of Mrs. Eddy's prose masterpieces, in which this view is enunciated. The gist is this:—

All who held land were gentlemen; because they held land they had to lead their servants and followers into battle, and they themselves were personally responsible for the appearance of so many followers when the King summoned them to war. Now we have seen in the

previous chapter that arms became necessary to the leader that his followers might distinguish him in battle. Consequently, all who held land having, because of that land, to be responsible for followers in battle, found it necessary to use arms (p. 20).

In fairness to the writer it is necessary to quote as much as this in order to show what his view is and how he explains the association of the upper class with the use of arms. That his definition of the upper class is hopelessly wrong and mistaken was conclusively shewn above. We have now to consider his explanation of the use, by that class, of arms.

If he had any real knowledge at all of the subject on which he here comes forward to enlighten others, and on which he speaks with such extreme confidence, Mr. Fox-Davies would have seen the absurdity of his own doctrine. For what is the essence of his case? It is that those who held land by military service were obliged to use arms in order that they might be distinguished by their "followers" in battle. For the limited class of the 'barons' or tenants *in capite* this argument might be sound. But what of the great body of those who held by military service, the knights and gentry who, in battle, had no 'followers' to lead? Our would-be teacher is, evidently, wholly unfamiliar with those "military obligations" of which he writes with such fluent confidence. The service due from a knight's fee was, of course, well defined. The military tenant held, in the legal phraseology of the time, by the service of two knights, by the service of one

knight, by the service of half a knight, as the case might be. The "followers" for whose service the knight was responsible in battle exist only in historical romance or the wild imagination of Mr. Fox-Davies.

Nor do his difficulties end here. Long before the time when, according to him, the use of the closed helmet made the adoption of arms necessary for recognition in battle, men were already holding land by the service of a third, a fourth, or a fifth part of a knight in war. Nay, on the fief of Alvred de Lincoln, several holders owed only the service of the eighth of a knight, one the service of a twelfth, and one the service of no more than the twenty-fourth part!<sup>1</sup> The single knight went forth to war, not to lead, but to be led. And if there was no necessity, in his case, to be recognised by supposed "followers," still less could the fraction of a knight lead "followers" into action. So, here again, the writer's doctrine comes tumbling to the ground.

He might have found it wiser to adhere to the view set forth in an earlier chapter, that the use of armorial bearings on a shield had its real origin in vanity.<sup>2</sup> Wrestling with the difficulty of constructing a sentence, he asserts that

dislike it as we may, vanity now and vanity in olden days was (*sic*) a great lever in the determination of human actions.

In the very next sentence we are hurried to a fresh discovery:—

<sup>1</sup> *Red Book of the Exchequer*, p. 216. These returns of tenants by knight service were made in 1166.

<sup>2</sup> pp. 16-17. ('The origin of Armory').



A noticeable result of civilisation is the effort to suppress any sign of natural emotion.

One had imagined that the Latin races possessed a civilisation older than our own, and that suppression of their natural emotions was hardly their characteristic. One had also supposed that the Red Indian excelled in a stoical demeanour. But we are now ceasing to be surprised.

This wonderful paragraph is brought to a close thus :—

We have then this underlying principle of vanity with its concomitant result of personal decoration and adornment. We have the relics of savagery which caused a man to be nicknamed from some animal. The conjunction of the two produces the effort to apply the opportunity for decoration and the vanity of the animal nickname to each other.

The last of these sentences fairly makes the brain reel. The writer, surely, in a memorable phrase, is a prey to “the exuberance of his own verbosity.” If his meaning is that “the animal nickname” was the *motif* in the shield’s armorial decoration, one can only say that a lion, the animal usually depicted, was not a recognised nickname. The house of cards has collapsed again.

It was said, whether fairly or not, of the late Professor Freeman, that the reason why he so disliked the phrase ‘Modern History’ was because it denoted that portion of history with which he was not familiar. It might, conversely, be said, with truth, of Mr. Fox-Davies, that the reason why he sneers at those “who look upon Arms as indissolubly associated with parchments and writings

already musty with age,"<sup>1</sup> and is so enthusiastic an admirer of that "actual living reality," the Heraldry of to-day, is that, to put it gently, he is not "at home" in those Middle Ages in which Heraldry had its heyday.

We have seen something of this already: we see it further when he explains that 'Clarenceux' is said to come from Clare—

the castle at that place being the principal residence of the ancient Earls of Hereford (*sic*), who were, from thence (*sic*), though very improperly, called Earls of Clare.<sup>2</sup>

For with Clare the earls of Hereford had no more to do than I have. When we come to deal with other matters we shall see Mr. Fox-Davies sadly troubled by those parchments "musty with age," to which real students of heraldry attach such absurd importance.

We find him, indeed, glibly writing:—

Research and investigation constantly goes (*sic*) on, and every day adds to our knowledge.

And his readers are given a glimpse of such research when he lightly tells them that

There is, however, among the Protections in the Tower of London one etc. etc.

It does, certainly, add to our knowledge to learn from our *Complete Guide* that such things are kept in the Tower. We have an unfailing test of a writer's pretensions to knowledge when we find him believing that the public records are kept in

<sup>1</sup> *The Complete Guide*, p. x.

<sup>2</sup> *The Complete Guide*, p. 32.

the Tower of London. His acquaintance with these "musty" parchments is obviously second-hand.

We have further proof that this is so in a passage under the head of 'Badges':—

There is a note in Harl. MS. 304, folio 12, which, if it be strictly accurate, is of some importance. It is to the effect that the "feather silver with the pen gold is the King's, the ostrich feather pen and all silver is the Prince's (*i. e.* the Prince of Wales), and the ostrich feather gold, the pen ermine is the Duke of Lancaster's." That statement evidently relates to a time when the three were in existence contemporaneously, *i. e.* before the accession of Henry IV (p. 466).

Mr. Fox-Davies then proceeds to explain that, in order to satisfy the conditions, "we must go back to before 1360," though he admits that the use of the famous ostrich feather by Henry, Duke of Lancaster, is strange. That use, the reader should observe, is a discovery of his own.

Now in this case, as it happens, greater care in mere copying from printed books would have saved him from thus exposing his own ignorance. Planché, to whom we owe the extract, gave a fourth badge:—"the ostrich feather silver, the pen gobonne is the Duke of Somerset's."<sup>1</sup> Boutell duly reproduced all *four* badges;<sup>2</sup> but Woodward, quoting the same passage, gives only the first three:<sup>3</sup> Mr. Fox-Davies must have "filled his can" from Dr. Woodward's cistern, and has been duly trapped. Had he only remembered Boutell's

<sup>1</sup> *The Pursuivant of Arms*, 1851 and 1873.

<sup>2</sup> *Manual of Heraldry* (1863), p. 382.

<sup>3</sup> *Heraldry*, p. 593.

work, of which he issued a 'revised' edition, he would have found that there was no 'Duke of Somerset' to bear this badge, till 1443.<sup>1</sup> And had he deigned to consult the "musty" MS. itself, he would have learnt, not only that "The Ostrige fether sylver & pen gobone is the Duke of Somerset's," but that in this list are 28 badges, which comprise that of Henry VII! And these bring us to the next point.

Mr. Fox-Davies is good enough to explain to us the 'sun-burst' badge, which is more, it seems, than Woodward could do.

Henry VII is best known by his two badges of the crowned portcullis and the 'sun-burst'. . . . Save a very tentative remark hazarded by Woodward, no explanation has as yet been suggested for the sun-burst. My own strong conviction, based on the fact that this particular badge was principally used by Henry VII, who was always known as Henry of Windsor, is that it is nothing more than an attempt to pictorially represent the name 'Windsor' by depicting 'winds' of 'or' (pp. 468-9).

In spite of the "strong conviction" of this lord of the split infinitive, the objections to his view, both of them fatal, are (I) that the sun-burst was *not* a badge of Henry VII; (II) that he was *not* known as Henry of Windsor.<sup>2</sup> The sun-burst was a badge of Edward III, and of Richard 'of Bordeaux,' his successor.

When, therefore, the author tells us that "research and investigation constantly goes on,"

<sup>1</sup> It duly appears on the garter-plate of John (Beaufort), Duke of Somerset, in the frontispiece to Planché's book (see also *Complete Guide*, p. 466).

<sup>2</sup> Henry the *Sixth* might be so styled from his birthplace, as were his son, Edward 'of Westminster,' his father, Henry 'of Monmouth,' and his grandfather, Henry 'of Bolingbroke.'

we are tempted to exclaim : " They *do(es)* indeed ! "

Of his own standpoint indeed he makes no secret : his opening words proclaim it.

Too frequently it is the custom to regard the study of the science of Armory as that of a subject which has passed beyond the limits of practical politics.<sup>1</sup>

" Why politics ? " the reader may ask. I do not profess to explain the meaning which is here attached to the word. However, we soon come to the point :—

Heraldry and Armory are . . . . . an actual living reality.<sup>2</sup>

So is the Tower of London. So also, I believe, is the headsman, who still has there his habitation. But the Tower has long ceased to be a palace, a fortress of importance, or a state prison, although we still " make believe " that it is a military stronghold. The old-world formulas of its elaborate military ritual, and the old-world uniforms of the veterans with whom we associate it, help to maintain the illusion and to make the place a fascinating relic of a glorious and historic past.

But that is precisely what those who think with Mr. Fox-Davies will not admit of heraldry. Although forced to admit in his own Introduction that " Armory may be a quaint survival of a time with different manners and customs, and different ideas from our own, " (p. x), he soon scornfully exclaims :—

It is foolish to contend that armory has ceased to exist save as an interesting survival of the past. It is a living

<sup>1</sup> *The Complete Guide*, p. ix.

<sup>2</sup> *Ibid.* p. x.

reality, more *widely* in use at the present day than ever before (p. 26).

The Tower also is, no doubt, more widely visited and appreciated "at the present day than ever before ;" but this will not avail to restore its ancient life, to make it, to our minds, the "living reality" that it was of old.

Let us, however, hear the writer's contention to the contrary.

Armory . . . . . is still slowly developing and altering and changing, as it is suited to the altered manners and customs of the present day. I doubt not that this view will be a startling one to many, etc. etc. <sup>1</sup>

It is indeed. For in what sense is Armory "developing," to say nothing of "altering *and* changing" as well? Surely the only possible meaning of the statement that it is being "suited to the altered manners and customs of the present day" is that the helm of the middle ages has now been replaced by the silk hat, the surcoat by the frock coat, and the shield by the umbrella "in its pride." <sup>2</sup> And these things are not so. The heralds still provide us with helms and shields of arms.

Now what, to speak plainly, is the cause of the writer's irritation? Why does he so resent the view that the time is past when Heraldry was a real and a living thing? Why does he find an absorbing interest in the coats provided by modern heralds as purveyors of arms to the nobility and gentry? One remembers how Mr. Oswald Barron

<sup>1</sup> *The Complete Guide*, p. x. The quotation is continued on pp. 329-330 above.

<sup>2</sup> An umbrella should be blazoned 'close' or 'in its pride.'

was moved to lofty scorn by Mr. Phillimore's contention that

Heraldry is a living science, and far more concerned with the twentieth century than with the archaic survivals of the fifteenth.

One remembers how "in the name of every antiquary and scholar who has given his time to the study of old English armory," he recorded his indignant protest "against this button-makers' gospel." <sup>1</sup>

And one adds the thought that a fervent champion of that modern heraldry which is mainly concerned with helms, and crests and shields of arms, and which is even reviving the badges and the standards of the later Middle Ages, <sup>2</sup> could not well place himself in a more ludicrous position than that of jeering at "archaic survivals of the fifteenth" century.

Returning, however, to Mr. Fox-Davies, his real grievance I take to be this. Those who are "commencing gentleman" (as an American might express it) and who make so brave a show in the pages of *Armorial Families*, resent any distinction being drawn between their modern coats and those which have been proudly borne from the great days of chivalry, or which have been hallowed by long association with an old territorial house. They and he, as the shepherd of the flock, view

<sup>1</sup> *The Ancestor*, No. VI, p. 174.

<sup>2</sup> "The term *standard* properly refers to the long tapering flag used in battle and under which an overlord mustered his retainers in battle." (*Complete Guide*, p. 474). It is surprising to learn that this distinction is now being granted to any Armorial Gent. who is "willing to pay the necessary fees" (*Ibid*).

with irritation the student and the scholar who are stirred by the sight of an ancient coat which may not, indeed, have been paid for, but is fraught with glorious memories, while finding nothing of interest in their own recent grants, which to themselves are of at least equal, if not of greater interest.

Again, the serious student of heraldry, the one who seeks to learn its origin, its development, and its growth, is forced to turn to those Middle Ages when it was a living and a growing thing, when there is really something to be learnt from the inter-relation of coats of arms. The patient scholar will endeavour to unravel the influence of coats on one another and the modifications which they underwent, not without a purpose. One who has done so for many years closed a scholarly monograph with this significant remark :—

Thus, we see, early Heraldry is full of meaning and amply deserves careful study, while Tudor Heraldry is mostly rubbish and Modern Heraldry beneath contempt.<sup>1</sup>

Heraldry, if a small, is at least a true branch of archæology and, as such, a handmaid of history and worthy of all respect. But its modern artificial existence has for scholars no meaning: for them its study would be waste of time; they are quite content to leave it to Mr. Fox-Davies and his friends.

And that, I think, is why we hear these snarls at the Middle Ages.

To recur once more to my former illustration, he who writes on the Tower of London does not

<sup>1</sup> Mr. A. S. Ellis on 'Constable of Flamborough' in *East Riding Ant. Soc.* 1902), Vol. XII.



concern himself with those admitted of recent years within its portals, but with those who entered them centuries ago, as kings, as warriors, as prisoners of state.

If I take a particular example of what our author means when he claims that Armory is "a living reality" which is still "developing", "altering", etc., it is because the coat is that with which he is most immediately concerned and which he thrusts, in the *Complete Guide*, somewhat insistently before us. It sprawls at large on the cover of that work and forms the subject of one of its few coloured illustrations of private arms. But I certainly shall not repeat that jest of "tuppence...coloured", which illustrates, on another page, the author's sense of humour.<sup>1</sup>

In base, the shield I speak of displays a human face, or at least its upper half, the hair above it stark on end. The uninitiated, who would so suppose, might imagine it to be that of a "plebeian," on finding himself in italic type in the pages of *Armorial Families*. For the shield, which strikes us as a new acquaintance, is that of Mr. Fox-Davies. It is, we presume, modern. But he who has studied heraldry in connexion with English history will at once be reminded of that royal emblem, the famous "sun of York." For this is that sun "in his splendour" beloved of Richard II, which blazed upon the mainsail of his ship and made all glorious his standard, that sun which on the day of

<sup>1</sup> "We must go back, once again, to the bed-rock of the peacock-popinjay vanity ingrained in human nature ..... for human nature has always had a weakness for decoration, and ever has been agreeable to (*sic*) pay the extra penny in the 'tuppence' for the coloured or decorated variety" (pp. 327-8).

Mortimer's Cross (1461) meant for the Duke of York what it meant for Cromwell at Dunbar, that sun which he bore thenceforth with his own White Rose of York and which decked the necks of his nobles with collars of roses and of suns. And again it recalls to the student the tragedy of Barnet Field (1471), when the star of the De Veres with its streams of light<sup>1</sup> was taken for the Sovereign's sun, changing the whole fortunes of the day, when the men who fought for Warwick slew their friends as foes. This and more will the "sun in his splendour" bring leaping to his mind. And yet, on the shield of Mr. Fox-Davies, the emblem moves him not, save perhaps with a vague wonder as to how it came, in that writer's words, to find itself "dans cette galère". It is sad, no doubt ; but it is true.

Modestly, however, its new owner bears but half the emblem and blazons it as "a demi-sun issuing in base", so he only associates himself with the rising sun ("in his splendour").

The crest, however, is a joy. In the *Genealogical Magazine*, when forming his peculiar organ, there was reproduced "a delightful cartoon by F. C. G.," (I. 696). Entitled "Arma Virumque," it represented Mr. Maclean offering a dragon as the emblem of Wales, with the words, "Don't you want a nice little dragon, Sir?". A comparison of the crest with the little monster in the hands of Mr. Maclean shows a striking likeness. It is the red dragon of Wales. But again, with singular modesty, he is content with a "demi-dragon". And now we

<sup>1</sup> It is so described by the old chroniclers, but it was, no doubt, the mullet from their coat.

come to that supreme touch which makes of our heraldry "a living reality", or, in the words of Mr. Phillimore, "living science". "Suited to the altered manners and customs of the present day", it places in the monster's claw an object which certainly appears to represent—an auctioneer's hammer.<sup>1</sup> If the 'charge' below him is the rising, and not the setting sun, there is no allusion to the words 'Going; going; gone!' Is there then a cryptic reference to that somewhat vulgar shout, in the preface to *Armorial Families*, "What price for the Norman descent?"

We will now deal with *The Complete Guide*, taking as our text its luckless remark that

"the handbooks of Armory professing to detail the laws of the science have not always been written by those having complete knowledge of their subject" (p. x).

I desire to impress upon the reader by actual demonstration that, in spite of the loud claim made for Mr. Fox-Davies that he provides in his *Complete Guide* a "comprehensive and accurate guide to the law and practice of heraldry,"<sup>2</sup> and that it is written "with a fulness of knowledge which it is hoped will render the work a *standard* one in time to come",—in spite also, of his complacent assurance that he cannot consider really satisfactory any other work on heraldry,<sup>3</sup>—it is marred by blunders which betray his ignorance, carelessness, or haste.

<sup>1</sup> See the coloured illustration.

<sup>2</sup> This phrase is rendered prominent in the prospectus by the use of Clarendon type.

<sup>3</sup> "I am *constantly* being asked to recommend a handbook of Heraldry. The ideal book has yet to be written . . . . some other modern treatises and dictionaries would have been of greater value had they never been published, and the authors might have easier tasks set them than to verify and correct their facts." (Preface to *Armorial Families*).

In the very frontispiece, facing the title-page of this "*Complete Guide to Heraldry*", the most salient feature is the royal crest, depicted as a *red* lion ! One might have imagined that even to a schoolboy it would be known that the royal crest is a lion in *gold* ('or'). It is an ominous beginning for the book. Guesses are at once the resource and the decisive proof of ignorance, and the author's guesswork on the coat of the Lords Ferrers of Groby illustrates vividly enough his so-called "fulness of knowledge". Baffled by the change in the Ferrers arms, he first informs the reader that

The arms of the Ferrers family at a later date are found to be : gules, seven mascles conjoined or, . . . but whether the mascles are corruptions of the horseshoes, or whether (as seems infinitely more probable) they are merely a corrupted form of the *vairé*, or, and gules, it is difficult to say (p. 81).

Yet, oblivious even of his own guesses, he writes, further on (p. 148), that the occurrence of the mascles "in the arms of Ferrers, whilst not being the original Ferrers coat, suggests the thought that there may be hidden some reference to a common saintly patronage which " they enjoyed with the earls of Winchester, " or some territorial honour common to the three of which the knowledge no longer remains with us." The founder of the lords Ferrers of Groby was, of course, a younger son, to whom Groby came from his mother, a Quency co-heiress, and who thereupon adopted her father's (Quency) coat. Such is the simple explanation of the facts, for which the author, in his "fulness of knowledge," gropes in vain. That

explanation is found even in no more recondite a work than the *Encyclopædia Britannica* (art. 'Heraldry'), though the arms baffled our "Complete Guide."

On the arms of Cologne we have more guess-work, betraying even greater ignorance. Of the crowns in the arms of Boston and of Hull we read that

a tradition has it that the three crowns . . . . . originate from a recognised device of merchantmen, who, travelling in and trading with the East and likening themselves to the Magi, in their Bethlehem visit, adopted these crowns as the device or badge of their business. The same remarks may apply to the arms of Cologne: "Argent, on a chief gules, three crowns or."

From this fact (if the tradition be one) to the adoption of the same device by the towns to which these merchants traded is but a step (p. 297).

In spite of the large amount of space it devotes to German heraldry, our 'Complete Guide,' evidently, has never even heard that

the glory of possessing the relics of the first Gentile worshippers of Christ remained with Cologne. In that proud Cathedral, which is the glory of Teutonic art, the shrine of the three Kings has, for six centuries, been shown as the greatest of its many treasures.

Cologne had more than "merchantmen": it had the Magi themselves.

Some of the statements of fact are no less amazing than the guesses. Of the 'garb' we read that

The earliest appearance of the garb in English heraldry is on the seal of Ranulph, Earl of Chester, who died

in 1232 . . . . . Garbs . . . . . figure . . . . . in the arms of many families who originally held land by feudal tenure under the earls of Chester, *e. g.* . . . . . Kevilioc ("Azure, six garbs, three, two, and one or").<sup>1</sup>

Now, 'Kevilioc' is the surname, *not* of a family, but of Hugh 'de Kevilioc,' earl of Chester, to whom the heralds assigned the above coat, and who was actually *father* of that earl Ranulph whose 'garb,' we read, is the earliest known! Again, the author confidently writes of "the well-known arms of *Courcy (sic) Barry of six vair and gules*" (p. 84), though the eagles displayed on the Courcy coat enjoy peculiar fame from their mention by so early a writer as Geraldus Cambrensis. The author was evidently thinking of that French house of *Coucy*, of which it was the proud boast that

Roy je ne suis,  
Prince ni comte aussi,  
Je suis le sire de Coucy,

and which has bequeathed us in its stronghold the noblest tower in France.

But to the author it is all the same. Does he not tell us that, on the Bouchier garter plates, the mantlings "are of gules, billetté or, evidently derived from the quartering for Louvaine (*sic*) upon the arms, this quartering being: 'Gules, billetté and a fess or' " (p. 389), though this was the coat, not of Lovaine, but of a Beauchamp? Does he not assert (p. 267) that

Simon de Montfort, the great earl of Leicester, was

<sup>1</sup> *Complete Guide*, p. 278.

the son or (*sic*) grandson of Amicia, <sup>1</sup> a coheir of the former Earls, and as such entitled to quarter the arms of the De Bellomonts (*sic*),

though he himself informs his readers that such quartering of arms was a thing of later growth (p. 543)? Does he not, again, assert that

Out of the multitude of marks (of illegitimacy), the bend, and subsequently the bend sinister, emerge as most frequently in use, and finally the bend sinister exclusively (p. 511),

and yet, on the very next page, inform his bewildered readers that

The bend sinister in its bare simplicity, as a mark of illegitimacy, was seldom used, the more frequent form being the sinister bendlet, or even the diminutive of that, the cottise.

And this, although he had warned them (p. 113) that "a cottise cannot exist alone, inasmuch as it has of itself neither direction nor position"!

Should we consult 'Sir Oracle' on the problem of the lozenge and the fusil, we learn that

In the ordinary way five or more lozenges in fess would be fusils, as in the arms of Percy, Duke of Northumberland, who bears in the first quarter: Azure, five fusils conjoined in fess or. The charges in the arms of Montagu, though only three in number, are always termed fusils (p. 147).

Are they indeed? When the author himself comes to blazon them, it is as "three lozenges conjoined in fess" (p. 388). And as for 'Percy,' he bears his fusils, *not* in the first, but in the second

<sup>1</sup> It was, of course, Simon's *father* who was the son of Amicia de Beaumont.

quarter, even as his predecessor bore them in the 16th century (p. 545). Our '*Complete Guide*' is apt, it seems, to ignore even his own guidance.

He does so certainly on his great discovery of a new heraldic colour. "I believe," he writes, "I am the first heraldic writer to assert the existence of the heraldic colour of white in addition to the heraldic argent" (p. 70). This assertion is based on the fact

that in the warrants by which the various labels are assigned to the different members of the Royal family, the labels are called white labels.

Yet he himself blazons "the labels in use at the moment" by the different members of the royal family, severally, as "argent" (pp. 497-8) and describes them as "recently assigned labels." Returning to the paragraph on pp. 70-71, we find the author explaining the necessity for the "white" label:—

it is necessary also that the label shall be placed upon the crest, which is a lion statant gardant or, . . . . and upon the dexter supporter which is another golden lion; to place an argent label upon either is a flat violation of the rule which requires that metal shall not be placed upon metal, . . . . but . . . . a white label upon a gold lion is not metal upon metal.

Having thus ingeniously explained the reason for the new fact he has discovered, the author soon announces an equally brilliant discovery, which throws that explanation to the winds. The "flat violation," we learn, is no violation at all!

There is one point, however, which is one of these little points one has to learn from actual experience, and



which, I believe, has never yet been quoted in any handbook of heraldry, and that is, that this rule must be thrown overboard with regard to crests and supporters . . . . . The Royal labels, as already stated, appear to be a standing infraction of the rule, *if white and argent are to be heraldically treated as identical* (p. 87).<sup>1</sup>

But this identity is precisely what he has denied on pp. 70-71, where he claims to have discovered that "white" is a distinct colour.

Let us return to that paragraph. He finds "a still further and startling confirmation" of his discovery "in the grant of a crest to Thomas Mowbray, Earl of Nottingham", in which "the coronet which is to encircle the neck of the leopard is distinctly blazoned 'argent'" and the label (which it replaced) "'white'". But if a silver coronet was to be placed upon the neck of a golden leopard (or lion), what becomes of his own argument, only seven lines above, that metal cannot be placed upon metal, and that consequently, on a golden lion, "argent" could not be placed?

From this tissue of contradiction—or, as he terms it, "confirmation"—I pass to that which is found on another page (p. 480). We there read of the arms of the earl of Wiltes, who quartered the coat of Man, that

The argent label on the arms for the Sovereignty of Man is a curious confirmation of the reservation of an argent label for Royalty.

These words actually occur *immediately* above an engraving of the arms of an earl of Lincoln, with the author's blazon "over all a label argent" (*sic*):

<sup>1</sup> The italics are mine.

they also occur just below the engraving of an earlier noble's arms, on which the author similarly blazons "a label argent"! Again, we have a "curious" illustration, on p. 150, "of the reservation of an argent label for Royalty," for the author there blazons the coat of Sir John Maltravers as "sable, fretty or, a label of three points argent" (*sic*). At the same period, the Prince of Wales was bearing the royal arms differenced "with a label *azure*" (p. 491)! And, to crown all, his original contention was that the label reserved for Royalty was, *not* 'argent,' but 'white.' Such is the guidance of a writer who aspires to put everyone right on Heraldry.

Need one labour the point through a further cataract of confusion? The author writes that

the patent altering or granting the Mowbray crest seems to me clear recognition of the right of inheritance of a crest passing through an heir female. This, however, it must be admitted, may be really no more than a grant, and is not in itself actual evidence that any crest had actually been borne.

Yet, only five pages earlier (p. 335), the author had given a drawing from this Mowbray's seal, showing the crest recognised as hereditary by the patent to have been actually borne by him no less than five years before! Our 'Complete Guide' further informs us that

By the time of the Restoration any idea of the transmission of crests through heiresses had been abandoned. We then find a Royal License necessary for the assumption of arms and crests (p. 342).

I should like to see that "Royal License", which

sounds like a confused recollection of the Warrant issued "after the Restoration" by Charles II to Lord Ogle to "assume and take the *Surname* of Percie and bear the *Armes* of Percie quarterly with his own," etc. etc.<sup>1</sup> but which apparently does *not* mention "crests."

The author's incorrigible lack of accuracy is seen in his notes on the arms of an Earl of Derby who "d. 1572" (p. 543). He is puzzled by "the arms on the escutcheon of pretence," which "are not those of his wife (Anne Hastings), who was not an heiress." But Anne Hastings was the wife of the earl who died in 1521, not of the one who "d. 1572." So, again, on p. 103, there is engraved a coat which needs to be accurately assigned. The author assigns it to John de Beaumont, Lord Beaumont, "(d. 1369)," though the name of the Lord Beaumont who died in that year was not John, but Henry. In a paragraph on the panther in British heraldry (pp. 193-4), we first read that "it is invariably (*sic*) found flammant, *i. e.* with flames issuing from the mouth and ears," and then that "it is usually (*sic*) represented vomiting flames." The same carelessness of language is seen in the statement, of the Corbets, that

Their name, like their pedigree, is unique (*sic*) inasmuch as it is one of the few (*sic*) names of undoubted Norman origin which are not territorial (p. 248).

The author must imagine that "unique" means one of a few! Neither the name nor the pedigree is in any sense unique. The Corbets are *not* even

<sup>1</sup> *The right to bear arms*, by 'X' (*Geneal. Mag.* II, 48).

strictly (as Eyton has shown) "one of the few remaining families which can show an unbroken male descent from the time of the Conquest." The Fitz-Geralds, who pre-eminently can do so, have a name which is "not territorial;" so has the ancient race of the Giffards ("sublimis prosapia,") whom, even in Norman days, "virtutis fama et generis copia illustres effecerat;" and the name of Corbet is no more peculiar than that of Luttrell, which is similarly an animal nickname, though the author, by erroneously writing "Geoffrey de Luttrell" (p. 329), makes it territorial.

We can tell where Mr. Fox-Davies has been "lifting" his information when we read of the famous white swan, that

From the Bohuns it has been traced to the Mandevilles, Earls of Essex, who may have adopted it to typify their descent from Adam Fitz Swanne, *temp.* Conquest (p. 467).

For one knows where this erroneous guess is found. As an expert on the Mandevilles and on the Conquest, I can state that there was no such descent. Adam Fitz Swan, lord of Hornby, was a great Northern land-owner of the old native stock, but he was living in the middle of the 12th century, not "*temp.* Conquest," and neither of his daughters and co-heirs married a Mandeville.<sup>1</sup> The author, however, is surely original, when he mentions as "Harmoustier" the great abbey of Marmoutier,

<sup>1</sup> See the admirable pedigree of his descendants in *Chartulary of St. John's Pontefract* (Yorkshire Record Series), Vol. II; and compare Farrer's *Lancashire Fines*, I. 31, 57, and *Lancashire Inquests*, I. 62-3; also *Red Book of the Exchequer*, pp. 338, 431. The reader should observe that this throwing back of Adam to the time of the Conquest presents a striking parallel to the cases of Stanley and of Trafford (see p. 61 above).

when he speaks of a famous writer on armory, Gerard Leigh, as "General (*sic*) Leigh" (p. 403), when he writes of a "Garter Hall-plate" (p. 229); or when he informs us that "Narcissus flowers (occur) in the arms of Lambeth" (p. 271), by which he means the Lambert family. Such is heraldry in a hurry!

The average reviewer, naturally enough, knows nothing of heraldry, but, in one case at least, by a lucky chance, the *Complete Guide* fell into the hands of one who wrote as an expert, and who was conversant with the good work achieved by previous writers. And this is what he wrote:—

Dr. Woodward curses the 'freebooting compiler' who should come after him, and his record of an especial contempt for a certain writer who thought to enhance the value of coat-armour 'by writing pages of incredibly snobbish rubbish' about it might have persuaded Mr. Fox-Davies at least to use his notebook elsewhere. Nevertheless Dr. Woodward's cherished collections have gone to pad out the 'Complete Guide' and to earn for its compiler the character of a scholarly antiquary . . . . . Whole paragraphs have been transferred without acknowledgment, and, since 'Heraldry, British and Foreign' is not the only cistern at which Mr. Fox-Davies has filled his can, we refrain from further criticism.<sup>1</sup>

I have no responsibility for this passage, which I merely quote from the *Review*, without adopting its assertions. Those, however, who are familiar with the beautiful heraldic illustrations in *The Official Baronage of England*<sup>1</sup> will at once recognise all the eleven helmed heads of nobles in the *Com-*

<sup>1</sup> *Saturday Review*, 26 June, 1909, p. 818.

<sup>2</sup> By Mr. James E. Doyle (Longmans, 1886.)

*plete Guide* (pp. 307, 328, 334-5) as having appeared among them, and, with that clue, will proceed to identify over sixty shields of arms in illustrations undistinguishable from those in *The Official Baronage*. What then is the meaning of the statement, in the announcement of this book, that

The *Illustrations* are entirely new, having been prepared on a uniform and exhaustive plan.

A red lion as the royal crest<sup>1</sup> is, no doubt, "entirely new"; but, with regard to Mr. Doyle's book, perhaps one may venture to suggest that some explanation is called for. In his *Introduction to Armorial Families* Mr. Fox-Davies has employed the phrase: "I call those sort (*sic*) of statements untruths pure and simple" (p. vii). But I do not propose to imitate either his vehemence or his grammar.

I now proceed to criticize, further, on my own account, the work.

Let us take a single paragraph in *A complete guide to Heraldry* and analyse its contents. In the chapter on "Augmentations of Honour" we read as follows:—

The well-known augmentation of the Seymour family: "Or, on a pile gules, between six fleurs-de-lis azure," is borne to commemorate the marriage of Jane Seymour to Henry VIII, who granted augmentations to all his wives except Catharine of Aragon and Anne of Cleves. The Seymour family is, however, the only one in which the use of the augmentation has been continued. The same practice was followed by granting the arms of England to the consort of the Princess Caroline (*sic*), and to the late Prince Consort (See page 499).

<sup>1</sup> See p. 340 above.

We will deal with the three constituent sentences of this paragraph in their order.

A mere beginner in heraldry, surely, would detect here the crazy blazon of the so-called *Complete Guide*. For *what* is the charge "on a pile" etc.? Incredible though it may seem, Mr. Fox-Davies has omitted the very essence of the augmentation, that charge of the "Lions of England" which denoted the royal alliance!<sup>1</sup> We have but to turn to Boutell's familiar *Manual* to learn that Jane Seymour's augmentation was "or, on a Pile, gu., between six Fleurs-de-Lys, az., *three Lions of England.*" I term his blazon "crazy," however, not on account of this omission, but because, as he himself gives it, it makes nonsense.

And yet, though he cannot even cite this "well-known" augmentation correctly, he actually took upon himself to issue a "revised" edition of Boutell—Boutell, to whom we have to turn to supply his own omission! I shall not tax him with his own words: "There is still a good deal of unblushing audacity in existence;" but one may at least say that his self-confidence is great.

I pass to the second sentence. Again the beginner in heraldry would point out to its author that a personal augmentation of honour to a king's Consort could not entitle her relatives to "continue" its use. But why then, it may be asked, is the Seymour family an exception? Why does it use, and rightly use, "the well-known augmentation"? The explanation is quite simple, though our *Complete Guide* has evidently never heard of it.

<sup>1</sup> The fleurs-de-lys, without them, would not denote it sufficiently.

When Edward VI came to the throne, he granted to his uncle the Duke of Somerset and the whole Seymour family the right to use this augmentation—"gold a pile gules thereon iij lioness passant regardant<sup>1</sup> of the field langued and armed with azur, between six flower de luces in asur"—as a special favour, in commemoration of his mother.<sup>2</sup> It is in virtue of this distinct and special grant, and not because "the use of the augmentation has been continued," that the Seymours are entitled to use it.

With regard to the third sentence it was *not* the same practice to grant the actual "arms of England" to the two Consorts named as to devise for Henry's Queens augmentations of honour derived from those arms, of which augmentations there are other examples,<sup>3</sup> granted to those who have not been Queens. Yet this, perhaps, is a small matter as compared with speaking of the Princess Charlotte, by whose untimely death, when heiress to the Crown, the country was so deeply stirred, as "the Princess *Caroline*."

<sup>1</sup> In spite of the *Complete Guide's* definite assertion (p. 181) that "*Lion passant regardant* is as the lion passant, but with the head turned right round looking behind (Fig. 298)," the lions granted to the Seymours were, on the contrary, lions of England, and are so depicted in the margin of the grant.

<sup>2</sup> The "imperial crown" was specially excepted from this fresh grant. It appears, I believe, at Hampton Court, over Queen Jane Seymour's coat, and it was also shown over her coat in the very interesting wall-painting discovered at Rye in 1905 (*Sussex Arch. Coll. L.* 120). What remains of her coat in this painting was submitted to Mr. Everard Green, Rouge Dragon, at Heralds' College, for identification, and it is amusing to find him identifying a quartering which can yet be distinguished as the arms of "Mac Williams" (*Ibid.*) For, though there was a family of the name who held an estate in Essex and used these arms, it was shown long ago by that learned antiquary, Mr. J. A. C. Vincent, that the Seymours were not descended from them, but from Mark William, a citizen and mayor of Bristol, whose daughter married Seymour (*Genealogist*, [N. S.], 1896, xii, 73-5). It takes, apparently, a long time for such knowledge to permeate the walls of the Heralds' College. But then, as Mr. Fox-Davies would express it, such correction of error is "unofficial".

<sup>3</sup> e. g. the well-known augmentation of the Manners family, with its lions of England and fleurs-de-lis.



Again and again we trace the signs of the writer's carelessness and haste. On the opposite page to that which contains the paragraph quoted, we read (towards the top) of an augmentation granted for a feat of arms "near Terouenne (*sic*) 5 Henry VII," which could not possibly belong to the date named. Surely, even Mr. Fox-Davies has heard of "the Battle of the Spurs" (fought for Théroutanne) and might know that it was fought in the year of Flodden, 1513, both battles, it is interesting to note, being commemorated by the grant of augmentations of honour.

Lower down on the same page we read of Richard II that "in 1386, when he created the Earl of Oxford (Robert de Vere) Duke of Ireland, he granted him as an augmentation the arms of Ireland ('Azure, three crowns or') within a bordure argent." This grant was not made "when he created the Earl of Oxford Duke of Ireland," but at an earlier date. And why does the writer glibly speak of "Azure, three crowns, &c.." as "the arms of Ireland"? They are not so described in the grant, and they really were, as is well-known, the arms assigned to St. Edmund, "one of the most popular national saints of medieval England."<sup>1</sup> The author further displays his ignorance of medieval heraldry by actually writing, in his glib fashion, of "the cross and martlets of St. Edmund" (*sic*)<sup>2</sup> though this was the coat, *not* of St. Edmund, but of St. Edward the Confessor,

<sup>1</sup> The error is the more inexcusable because Woodward, whose pages he has so freely used, styles the coat granted to Robert de Vere "the mythical coat of St. Edmund."

<sup>2</sup> *Complete Guide*, p. 473.

which Richard II similarly added to his own royal arms and to those of Mowbray also, besides adding them (differenced by bordures) to the arms of his maternal relatives, the Holands.

This brings us to one of the author's supposed discoveries, which is only, as a matter of fact, a strange, but persistent blunder of his own. That blunder is that Richard II made Thomas (Mowbray), Duke of Norfolk, a "grant of the arms of Plantagenet (*sic*), which thus *technically* became thereafter the arms of Mowbray." <sup>1</sup> The amazing thing is that he has printed twice over his authority for that statement, <sup>2</sup> and that no such statement is found in it! Its heading is—

Rich(ard) 2 gave to Thomas Duke of Norff. & Erle Marshall the armes of Saint Edward Confessor in these words

The heading is strictly accurate, and the narrative from which the passage is taken is duly printed in Dugdale's *Monasticon* (VI, 321). <sup>3</sup>

I here place the *Monasticon* version by the side of the quaint jargon printed by that "scholarly" writer (as reviewers sometimes term him), Mr. Fox-Davies.

MR. FOX-DAVIES      and      THE TRUE TEXT.

Et dedit eidem Thome ad      Et dedit eidem Thomæ  
pertandum (*sic*) in sigillo    ad portandum in sigillo et

<sup>1</sup> *Genealogical Magazine* (1899), II, 401.

<sup>2</sup> *Ibid.* and *The Complete Guide*, p. 465.

<sup>3</sup> "Progenies Mowbraiorum." It is one of the usual narratives of the patron's family. Mr. H. J. Ellis (of the Department of MSS.) kindly informs me that the *Monasticon* text is from a transcript by Francis Thynne in Cott. MS. Cleopatra C. III. Sir Harris Nicolas (in *Archæologia*, Vol. XXXI) printed the same passage quite correctly from the transcript by Charles, Lancaster Herald, in Cott. MS. Julius C. VII.

et vexillo quo ( <i>sic</i> ) arma S <sup>d</sup> Edwardi. Idcirco arma bipartita portavit scil't Sci Edwardi et domini marcialis ( <i>sic</i> ) anglia . . . . . et duo parva scuta cum leonibus et ( <i>sic</i> ) utraq' parto ( <i>sic</i> ) predictorum armorum.	vexillo suo arma Sancti Edwardi. Idcirco arma bipartita portavit, videlicet Sancti Edwardi et domini marescalli Angliæ . . . . . et duo parva scuta cum leo- nibus ex utraque parte præ- dictorum armorum.
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There is no question of printer's errors, for all the freaks in the earlier version have been faithfully reproduced in the second, ten years later.

What the writer of the narrative states is that the King gave Thomas the arms of St. Edward, for use on his seal and his banner, and that in consequence of this grant (*Idcirco*) the Duke bore those arms impaled with those of the lord marshal. This is interesting and simple enough to real students of heraldry; <sup>1</sup> for, just as Richard II assumed the arms of St. Edward, and impaled them (as the dexter coat) with his own, so he granted them, evidently, not only to Thomas, but to three other of his relatives.

The facts are these. In 1397, on Michaelmas Day, Richard celebrated the triumph of his cause by a shower of peerage honours. He created, seated in Parliament on his throne, five dukes, a duchess, a marquess, and four earls: <sup>2</sup> and the chronicler informs us that he then added the arms of the Confessor to his own. <sup>3</sup> As four of the five dukes then created are found similarly impaling St. Edward's arms, namely the Duke of Norfolk

<sup>1</sup> Woodward himself states the facts quite correctly (*Heraldry*, pp. 474, 528).

<sup>2</sup> *Rot. Parl.*, III, 355; Walsingham, *Historia Anglicana*, II, 227.

<sup>3</sup> "Proinde Rex mutavit arma sua, addiditque scuto suo arma Sancti Edwardi Regis et Confessoris" (Walsingham).

and (with marks of difference) the Dukes of Hereford, Exeter, and Surrey, they must have begun to do so, on their creation, when the King himself adopted them. The coats with which Thomas (Mowbray) Duke of Norfolk and the Holands (Dukes of Exeter and Surrey) impaled them were the actual "lions of England," the arms of Edward I, duly differenced. And the reason why they bore them was that Mowbray and Holand, respectively, represented sons of Edward I., by his second marriage, namely Thomas "of Brotherton," and Edmund "of Woodstock." It is all beautifully simple.

The interesting point is that we find Mowbray and Holand assuming—and allowed to assume—the royal arms (differenced) *in lieu* of those they inherited from their fathers.<sup>1</sup> Mr. Fox-Davies, his head full of the copybook rules of modern heraldry, cannot grasp the possibility of their venturing to do this without an express "grant" from the Crown.

And yet he was forced, with much surprise, to admit the principle in the case of the crest. An earlier grant from Richard II had expressly recognised the "hereditary" right of the Duke of Norfolk (then an earl) to the crest of the heir-apparent to the Crown! On this we read:—

The ideas of the present day and the presently accepted laws of armory are absolutely in opposition to the inheritance or transmission of a crest by female heirs, but the

<sup>1</sup> There is actual evidence that they did so *before* they were granted those of St. Edward. The Mowbrays bore those of Thomas 'of Brotherton,' England with a label argent, and the Holands, earls of Kent, those of Edmund 'of Woodstock,' England with a bordure argent.

foregoing grant would seem to show that matters were otherwise (*sic*) in those days, or that then, as now, royal arms had laws unto themselves. . . . The words are a clear recognition of a then existing right, and the insertion of the word "hereditary" precludes any attempt to explain away the point by the supposition of any prior and specific gift or grant of the crest.<sup>1</sup>

Just so. And if this was the case with the royal crest, it would *a fortiori* be so with the arms.

Moreover, if Mr. Fox-Davies had acquainted himself with the case of Holand, he would have found that the Holands also used the royal crest, the golden standing lion ("leopard"), duly differenced, so that there was evidently a principle at work, which was acted on consistently in the case of both families.

Nevertheless, Mr. Fox-Davies takes upon himself to criticize the action even of his friends the heralds in Chapter assembled. It is true that this Chapter was held in 1474, when they had not the advantage of a "Complete Guide," and when they were ignorant, as he would hold, of the modern rules of heraldry. They suffered also, he kindly explains, from a "misconception of the facts concerning an important case which doubtless was considered a precedent." And so we come again to his own supposed discovery.

it appears to have been overlooked that the Mowbrays bore these Royal Arms of Brotherton not as an inherited quartering, but as a grant to themselves.<sup>2</sup>

We have seen that this alleged grant is a mere delusion of his own, based apparently on a hasty

<sup>1</sup> *Genealogical Magazine*, II. 400. See also pp. 345, 346 above.

<sup>2</sup> *Complete Guide*, p. 556.

reading of a passage which contains nothing of the kind. The only alternative explanation is that, to the writer who believes that *gens* means "a man," the learned tongue in which the passage is written has proved an insuperable obstacle to grasping its author's meaning.<sup>1</sup>

In any case his point is this. In 1474 the heralds came to the decision, as a matter of principle, that the Duke of Buckingham, as heir ("ayer") to Thomas of Woodstock, "Duke of Glocestre and Sonne to King Edward the third," might "beire his Coote alone."<sup>2</sup>

They evidently followed, most exactly, the Mowbray and Holand precedents, and allowed the Duke the arms of the royal ancestor of whom he was, similarly, *sole* heir.

Mr. Fox-Davies' criticism is—

I imagine that this decision was in all probability founded upon the case of the Mowbrays, which was not at the time an exact precedent, because with the Staffords there appears to have been no such Royal grant as existed with the Mowbrays.<sup>3</sup>

Here again we have that "Royal grant" which exists only, we have seen, in his own confused imagination. In short, as he would say in his quaint English, "matters were otherwise."

<sup>1</sup> Possibly this is the true explanation, for we are told on p. 273 that the legend on a coin of the Emperor Hadrian runs "Restutori (*sic*) Galliaë," while on p. 276 we find the interesting suggestion, as to the Cantelupe coat: "Is it not probable that lions' faces (*i.e.* head *de* leo) may have been suggested by the name" (Cantelowie)? There are schools, I fear, in which such grammar might incite to physical castigation. And it savours, surely, of *lèse-majesté* to assert (p. 451) that the Hohenzollern motto is "Nihil sine Deus" (*sic*)!

<sup>2</sup> *The Complete Guide*, p. 556.

<sup>3</sup> *The Complete Guide*.

It was not the heralds who were guilty of a misconception : it was he himself who had blundered. Yet, proud of his superior knowledge, he will not allow us to forget this unlucky grant. "Heedless of grammar,"<sup>1</sup> he asserts that "the grant of the arms of Plantagenet are (*sic*) not the only armorial honours to which the Howards have succeeded,"<sup>2</sup> and is good enough to explain that—

the knowledge that the arms of Plantagenet had been regranted to the Mowbrays is not very general, and we take it that there are very few who are aware that.... the Duke of Norfolk and his predecessors of the House of Howard bear and have borne these Royal Plantagenet arms, not as the quartering for 'Thomas of Brotherton,' but as a quartering for Mowbray, to which family (*sic*) the arms of Plantagenet were granted, as we have seen, to be borne (with the arms of Edward the Confessor) as their chief and principal arms.<sup>3</sup>

To which one replies, (1) that the grant was *not* of "the arms of Plantagenet"; (2) that it was *not* made to "the Mowbrays" as a "family," but to one member thereof; (3) that these "Royal Plantagenet arms" are *not* borne by the Dukes of Norfolk "for Mowbray," but "for Brotherton," according to a work which Mr. Fox-Davies des-

<sup>1</sup> Vide 'The Jackdaw of Rheims.'

<sup>2</sup> *Gen. Mag.* II, 439. We similarly read in the *Complete Guide*, of a well-known Order, that "its insignia is (*sic*) worn at court" (p. 568), and we shall learn below, of its author, that "the fruit of his labours are (*sic*) embodied in" it. One is loth to suggest that Mr. Fox-Davies reviewed his own *Armoial Families* in his own magazine, but when we read of its illustrations "from drawings by Mr. G. W. Eve, A. R. P. E., of which the achievement of the arms of De Tonge are (*sic*) a good example" (*Geneal. Mag.* II, 458), we seem, surely, to recognise his own inimitable grammar, even as his unconventional Latin adorns the opposite page with the bold, but strange device : 'MORS PATIOR (*sic*) MACULA.'

<sup>3</sup> *Geneal. Mag.*, II, 442.

cribes as of "unchallengeable" authority, his own *Armorial Families*! <sup>1</sup>

As to the "arms of Saint Edward" (the Confessor), Mr. Fox-Davies holds that their grant, without difference, to the Duke of Norfolk, "is the more remarkable as they were borne by the Duke impaled with the arms of England." <sup>2</sup> But the coat with which the Duke did actually impale them was that of Thomas "of Brotherton," namely that of Edward I differenced by a label. As the King himself impaled them with the arms he had inherited from Edward III, namely France and England quarterly, <sup>3</sup> there was no possibility of confusion.

In his original article on the subject, Mr. Fox-Davies took upon himself to criticise a note in the *Complete Peerage*, which spoke of the hapless Earl of Surrey "quartering the arms of Edward the Confessor," under Henry VIII, "in defiance of the rules of Heraldry," as a "piece of folly and conceit." His comment was that—

If the foregoing grant be authentic—and there seems no reason to doubt it,—the folly and conceit are discounted (*sic*) and the "defiance of the laws of Heraldry" somewhat trivial..... As the arms in question are said to have been granted to their maternal ancestors, and as they were set up in conjunction with the arms of Howard, it is difficult to see wherein the offence lay. <sup>4</sup>

<sup>1</sup> Ed. 1894, p. 739. On some pages in the same volume it is entered as "for Thomas of Brotherton."

<sup>2</sup> *Complete Guide*, p. 596.

<sup>3</sup> They are so shown on the brass of his standard-bearer, Sir Simon de Felbrigge.

<sup>4</sup> *Genealogical Magazine*, II, 402-3. So also on p. 396: "with regard to their arms we find on the one hand the grant to them (*sic*) of royal privileges, for the simple exercise of which privileges on the other hand, some of their descendants suffered attainder, and in one case death upon the scaffold."



Difficult, perhaps, for Mr. Fox-Davies, who carelessly asserts that the grant was made to the Earl's "maternal ancestors," though as the editor of the *Complete Peerage*, in due course, replied :

no limitation whatever having been made, the grant was apparently purely a mark of personal favour, and not one that would extend to the grantee's posterity.<sup>1</sup>

We know that this was so in the case of the Vere augmentation (p. 353 above). This view, which is based on the absence of words of inheritance, is borne out by the fact that the grantee's descendants did not treat the right as hereditary or continue the use of the coat.<sup>2</sup> But, in a moment of rashness, the Earl of Surrey revived it. Mr. Fox-Davies appears to have benefited by the correction, for his contention does not appear in *The Complete Guide*.

When he issues in due course his "Completer Guide to Heraldry," his heraldic education may have further improved as the result of my own criticism. I say "further," for the Howard augmentation proves that it has done so already. Ten years ago, he admitted the justice of my contention that, under the limitation, no Howard—not even their head, the Duke of Norfolk himself,—was entitled to the famous Flodden augmentation which adorns the family coat of arms. But he held that "Probably however subsequent records and exemplifications have regularised its use by other members of the Howard family." To this

<sup>1</sup> *Ibid.* p. 509.

<sup>2</sup> This is well seen on another page (p. 493) of the *Complete Guide* itself, where the coats of successive Mowbray Dukes are shown. And the *British Museum Catalogue of Seals* affords original and decisive evidence.

I replied that the heralds, on whose mysterious authority he relied, had, of course, no power to alter the original limitation in the Act of Parliament, and that he did not even suggest it had been changed.<sup>1</sup> So we now read that "it is borne by official sanction, *or more likely perhaps by official inadvertence,*"<sup>2</sup> by the Duke of Norfolk and the rest of the Howard family."<sup>3</sup> *Sic transit.*

The reader, probably, will now have grasped that the author of *The Complete Guide* is himself in need of guidance. Nor am I the only writer who has had to insist upon the fact. Keeping to the subject of augmentations, we find him writing that "the earliest undoubted (*sic*) one in this country that I am aware of dates from the reign of Edward III," when Sir John de Pelham, who "shared in the glory of the battle of Poitiers, and in the capture of the French king" John, "was granted two round buckles with thongs." Upon which his critic comments:

Froissart and his fellows know nothing of Sir John's deed, and the thongs appear first two hundred years later, purveyed by a herald to a Pelham against the wish of the head of the house, who protested against such "altering of arms for gain."<sup>4</sup>

Alas for poor Mr. Fox-Davies, who writes, we learn, "with a fulness of knowledge, which it is hoped will render the work a *standard* one in time to come."<sup>5</sup>

<sup>1</sup> *Studies in Peerage and Family History*, p. 41.

<sup>2</sup> The italics are mine.

<sup>3</sup> *Complete Guide*, p. 590.

<sup>4</sup> *Saturday Review*, 26 June, 1909, p. 818.

<sup>5</sup> Prospectus of *The Complete Guide*.

Again and again we return to the true cause of his failure, namely that his real interest is in the so-called 'Armory' of to-day and that in historic heraldry his knowledge is at fault. He betrays, indeed, the fact himself, when we find him claiming that

During the editorship of 'Armorial Families' and kindred works, the author has had a practical experience which is probably unrivalled in its extent, and the fruit of his labours are (*sic*) now embodied in the present volume.<sup>1</sup>

A specimen of that fruit "are" the statement that "fractured castles (*sic*) will be found in the shield of Willoughby quartered by Bertie" (p. 282),<sup>2</sup> from which we discover that the real coat, the 'fretty' coat of the Lords Willoughby, which the Berties quartered as their heirs, is to him all unknown.

To learn what a frightful hash Mr. Fox-Davies can make of his heraldry and genealogy alike, even when he has only to copy from the printed works of his predecessors, let us glance at two consecutive illustrations (Figs. 717, 718) in his book. They are duly found, source included, in Doyle's *Official Baronage*, III, 742, 746. Under the coat (718) of Richard, Duke of York (father of Edward IV) we read that he was "son of Edward, Earl of Cambridge and Duke of York", which he was not; and then "Arms as preceding", which they are not.<sup>3</sup> We then turn to the preceding coat (717),

<sup>1</sup> *Ibid.*

<sup>2</sup> See vol. I, p. 32 above.

<sup>3</sup> The 'preceding' arms were "France (ancient) and England quarterly" differenced.

that of Edmund of Langley, Duke of York, and read under it :—

His son Edward, Earl of Cambridge, until he succeeded his father, i.e. before 1462 (*sic*), bore the same with an additional difference of a bordure of Spain (Fig. 316). Vincent attributes to him, however, a label as Fig. 719, which possibly he bore after (*sic*) his father's death.

Now Edward did not bear the same coat, nor did he difference it with "a bordure," but with a *label* of Castile (Vincent says a label of Spain) ; and we have only to turn to " Fig. 316 " to learn that it was not Edward, but Richard, his younger brother, who differed with a bordure of Leon (not "Spain"). Edward did *not* succeed his father in 1462, but in 1402, when he adopted his father's label of York, having borne the other, not "after" but *before* his father's death. All this was fully explained in Boutell's 'Manual of Heraldry' (pp. 184, 196, 197), of which Mr. Fox-Davies has presumed to issue a "revised" edition !

And if he should retort that *the Complete Guide* is mainly concerned with "a practical exposition of the science, as practised at the present day,"<sup>1</sup> well, we will take an example of that also. 'Rules' and 'laws' in Heraldry are with him almost an obsession : his 'Armory' is manacled and fettered. Let us turn then to his chapter on "the rules of blazon." Now one must not insist too harshly on absolute uniformity in blazon. It is, after all, but a means to an end, and the blazon which enables a coat to be easily and accurately depicted attains that end, whether the wording is in accordance

<sup>1</sup> Prospectus of *The Complete Guide*.

with arbitrary 'rules' or not. Nevertheless, one does at least expect it of Mr. Fox-Davies, who is a perfect formalist in 'Armory' and attaches so much importance to the very *minutiæ* of the science. Yet when he has occasion to blazon the "famous coat" of Carlos, the coat which commemorates the King's escape in the Boscobel oak-tree, he cannot even be consistent in his own wording. Here are his two versions :—

<p>Or, on a mount in base vert, an oak-tree proper, <i>fructed or</i>,<sup>1</sup> surmounted by a fess gules, charged with three imperial crowns of the third (Plate II) (p. 262)</p>	<p>Or, issuing from a mount in base vert, an oak-tree proper, over all on a fess gules, three imperial crowns also proper (Plate II) (p. 589)</p>
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We first observe that the oak-tree is blazoned "fructed or"<sup>2</sup> in the one case, but not in the other, and that the three crowns appear as "of the third" in one case, but "proper" in the other. These two alterations appear to be connected if, as I presume, "the third" refers to "or." It is one of the inviolable rules with all heraldic 'precisians' that a tincture must never be repeated, but the circuitous phrase "of the first" ("second," and so on) be substituted.<sup>3</sup> I agree with Mr. Oswald Barron that this is a clumsy method, but in any case it seems to have brought Mr. Fox-Davies to grief. His imperial crowns, it will be seen, are not blazoned alike.

<sup>1</sup> The italics are mine.

<sup>2</sup> It is so depicted in the coloured illustration and should be so blazoned, according to the rule on p. 266.

<sup>3</sup> Some of the pundits who have striven to smother heraldry in "rules" apply, I believe, to the 'metals' a variation of this rule, but all agree that repetition is forbidden.

But I am more impressed by the two phrases "over all" and "surmounted by." The anxious reader may enquire which of them is really right. According to the rule laid down by Mr. Fox-Davies himself, they are actually both wrong. On p. 103, in his passion for 'rules' and 'laws,' he draws a sharp distinction between "debruised" and "over all." We first read that

When any charge, ordinary, or mark of cadency surmounts a single object, that object is termed "debruised" by that ordinary.

If so, the single "oak-tree" should have been blazoned by him as "debruised," not "surmounted," by the fess.<sup>1</sup> On the other hand,

If it surmounts everything, as, for instance, "a bendlet sinister," this would be termed "over all."

Would it indeed? We have only to turn to p. 554 to read that

instances.... can be found.... of a coat with quarterings, the whole debruised (*sic*) by a bendlet sinister, notably in the case of a family of Talbot, where eight quarters are so marked.<sup>2</sup>

But having thus proclaimed his 'rules,' our 'Guide' is at once in difficulty. For, returning to p. 103, we read that

When one charge surmounts another, the undermost

<sup>1</sup> As a matter of fact, Mr. Woodward, in his great work on heraldry, actually selected as his example of "debruised" a Watson coat precisely similar in form (less the Crowns) to the Carlos coat (Plate XXXII, fig. 4). It is blazoned in 'Burke's Armory': "on a mount an oak tree, acorned or, debruised by a fess azure."

<sup>2</sup> So also on p. 512: "Anciently the bendlet was drawn across arms and quarterings, and an example of a coat of arms of some number of quarterings debruised (*sic*) for an illegitimate family is found in the registration of a Talbot pedigree."

one is mentioned first, as in the arms of Beaumont (see Fig. 62). Here the lion rampant is the principal charge, and the bend which 'debruises' (*sic*) it is mentioned afterwards.

If the bend "debruises" the lion in the Beaumont coat, then the "fess" debruises the oak-tree in the Carlos coat, for aught that the author tells us to the contrary. But we promptly find ourselves again at sea. For his actual blazon (on the same page) under the Beaumont coat does not employ 'debruised,' but runs "a lion rampant or, over all (*sic*) a bend gobony" etc.<sup>1</sup> Planché, whose *Pursuivant of Arms* is at least well removed from the rut of heraldic guide-books, went so far as to select, as an example of "debruised," the well-known coat of Henry of Lancaster (brother and heir of Earl Thomas), which he blazoned "England debruised by a bend azure" (p. 189). Boutell, on the other hand, blazoned the coat: "England differenced with an azure bendlet."<sup>2</sup>

This coat affords an interesting test of *The Complete Guide's* blazoning. We learn on p. 511 that

a bend (*sic*) superimposed over a shield..... was originally depicted as a bend (*sic*) dexter, and as a mark of legitimate cadency is found in the arms of the *younger* son of Edmund Crouchback, Earl of Lancaster, etc.

But on p. 480 we read that

At Caerlaverock, Henry of Lancaster, brother and successor of Thomas, Earl of Lancaster,

Portait les armes son frère  
Au beau bastoun sans label,

<sup>1</sup> The simple medieval blazon of the coat ignored both such terms as 'debruised' and 'over all' or their equivalents.

<sup>2</sup> Ed. 1863, p. 325.

*i. e.* he bore the Royal Arms differenced by a bendlet<sup>1</sup> (*sic*) 'azure.'

Lastly, beneath an engraving of the coat (p. 491) we find the simple blazon: "England with a bend (*sic*) azure."

Here then our *Complete Guide* casts its principles to the winds: ignoring all such later rules as those which prattle of 'debruised,' 'surmounted,' or 'over all,' it reverts to what we have seen was the simple medieval blazon. And yet Mr. Fox-Davies is eager to denounce—

an unofficial attempt to introduce a new system of blazoning under the guise of a supposed reversion to earlier forms of description.... even if it were what it claims to be, merely the revival of ancient forms and methods, its reintroduction cannot be said to be either expedient or permissible.... To ignore modern armory is simply futile and absurd" (p. 99).

Nevertheless, in blazoning a shield of the 16th century, he ignores his own elaborate rules (p. 103), and blazons the coat of FitzPayne, like the similar Lancaster coat, in simple medieval fashion: "Gules, three lions passant in pale argent, *a bendlet azure.* (p. 545)"<sup>2</sup>

For what is the upshot of the whole matter? It is that a heraldry in its decadence (*pace* Mr. Fox-Davies) has been so confused and overlaid by the pedants' maze of rules that even *The Complete Guide* can only lead to a morass. If the little pettifogging "rules" on which its author loves to

<sup>1</sup> "A bendlet," we learn on p. 113, is "a charge half the width of the bend."

<sup>2</sup> The italics are mine. It is curious that this blazon happens to be also Mr. Doyle's under the same quartered coat (II, 654).



insist were even intelligible or consistent,<sup>1</sup> one might forgive their pedantry; but I have shown that even to their champions they are but a maze of confusion. To borrow one of his own phrases they are among "those pleasant little insanities which have done so much to (*sic*) the detriment of heraldry" (p. 72).

Should he, however, fall back on "*Armorial Families* and kindred works," as on an impregnable position, well, we will follow him even there and meet him on his own ground. Although to a student of historic heraldry it is not of the slightest consequence whether a coat has what he terms "official authority" or not, whether it is "recorded" at the College or not, we will apply to him his own test.

Beginning a 'Dictionary of Heraldry' on the ground that "there is at present no dictionary of heraldry which can be thoroughly relied upon," he observed of the letter A that

The Greek letter Alpha forms a part of the coat-of-arms attributed to the office of Regius Professor of Greek in the University of Cambridge (but this coat-of-arms is also without authority)<sup>2</sup>

Alas for the writer's "fulness of knowledge"! Several of his readers were able to enlighten him and refer him to the grant of this coat by Cooke, Clarencieux King of Arms in 1590.<sup>3</sup> Nor was

<sup>1</sup> For instance, under 'semé' (p. 89), we are told that "A field or charge semé of fleurs-de-lis is termed 'semé-de-lis', but if semé of bezants it is bezanté, and is termed platé if semé of plates," etc. etc. Why this distinction? The field of the Beaumont coat was blazoned in the Middle Ages "*flurette dor*," not, as by Mr. Fox-Davies, a few lines lower down, "semé-de lis." And heraldry, after all, comes to us from the Middle Ages.

<sup>2</sup> *Genealogical Magazine*, II, 73.

<sup>3</sup> *Ibid*, pp. 124-6.

this wonderful, if they were students of heraldry, for the actual grant had been exhibited at the great London Heraldic Exhibition, and had duly appeared in the catalogue thereof issued three years before he wrote this passage.

Let us take another instance. As an author of *The Book of Public Arms*, Mr. Fox-Davies has specially studied the subject of corporate heraldry, on which the public, doubtless, by this time, considers him a great "authority." Yet in that work the town of Dover was doomed, with the 'plebeian' of *Armorial Families*, to the shame of italic type. We there read :—

*Dover (Kent)—Has no Armorial bearings. Burke in his 'General Armory,' however, quotes : 'Sable, a cross argent, between four leopards' heads or.'*

on which Mr. Fox-Davies comments :

The origin of the above coat I am utterly at a loss to even (*sic*) guess.<sup>1</sup>

There is something pathetic in such ignorance,—I mean, such "fulness of knowledge." The poor editor had again to be enlightened by one of his readers, who explained to him that the coat was that "of Dover Priory."<sup>2</sup>

But this was not the worst. The Town Clerk of Dover produced "an official letter" from the College of Arms, and Mr. Fox-Davies had, again, to swallow the unwelcome leek. From that letter "it is evident," he wrote, "that Dover does

<sup>1</sup> *Ibid*, p. 76.

<sup>2</sup> *Ibid*, p. 124. The actual proof, however, is found in an impression of the seal of a Prior of Dover which is in the Dover Museum (Statham's *Dover*, p. 156).

possess arms." <sup>1</sup> Arms? One is driven, in despair, to ask whether official heralds know what "arms" are. It would be scarcely credible, if we had not their own testimony, that Queen Elizabeth's heralds, when they visited the county in 1574, entered as "the Armes" of Dover the obverse and reverse of its common seal; that in 'Arms of Towns,' a MS. book in the library of the College, the obverse is made into a shield as the arms of Dover, and that the late Garter directed one of his officers, on the strength of the above evidence, to recognise (Mr. Fox-Davies holds) as Dover's arms a design which is not, and was never meant to be, heraldic at all!

To any intelligent antiquary, to any competent archæologist, the blunder must seem grotesque. For the scene is of absolutely normal type on an ancient borough seal. It represents St. Martin in his famous act of charity, St. Martin, the patron saint of that venerable Dover Priory, the canons of which are mentioned in the pages of Domesday book. <sup>2</sup> Even so had Rochester, on its ancient borough seal, St. Andrew stretched upon his cross, or Appleby, St. Lawrence on his gridiron, or Rye, St. Mary shown with her church and her realm of heaven, or Hastings, St. Michael and his dragon, or Tenterden, St. Mildred enshrined, or Colchester, St. Helen and her 'invented' cross. Could anyone but an official herald take such designs for "arms"? Yes, there is always Mr. Fox-

<sup>1</sup> *Ibid.*, p. 76.

<sup>2</sup> See, for this Priory and for the seal itself, "a most precious relic of ancient days," Mr. Statham's *History of . . . Dover* (1899), which contains extremely fine photographs of the obverse and reverse of this seal.

Davies, who now, of course, duly states that "St. Martin occurs in the arms of Dover." <sup>1</sup> And yet it is he himself, not the writer of these lines, who asserts that "the ignorance of English heralds has transformed into the proboscides of elephants" the "horns" which their German brethren placed "on either side of the crest," and have so styled them in modern grants as "the result of pure ignorance." <sup>2</sup>

In the great days of English heraldry, long before there was a Herald's College, the men of Dover flew that banner which still figures on their ancient seal, the guard and the terror of the Narrow Seas. The Frenchmen fled before it in the victory of Dover Straits and above the carnage of St. Mahé it swept the Normans from the sea. Upon that banner the herald's art rose to a mystical beauty. Mating the arms of England's King with silver ships upon an azure field, it showed them, not side by side, but indissolubly conjoined, proclaiming, inviolate through the ages, the bridal of England and the sea.

But let us return to Mr. Fox-Davies, who would look on these "so-called" arms (p. 182) as 'unofficial' or 'bogus.' What has he to say in *The Complete Guide* (1909) on the subject of what is probably the most famous of the corporate coats in England, the arms of the City of London?

The arms of the City of London are recorded (*sic*) in the College of Arms (Vincent) without a crest (and by the way without supporters)..... Whilst dealing with the arms of London, one of the favourite "flaring"

<sup>1</sup> *Complete Guide*, p. 164.

<sup>2</sup> *Ibid*, pp. 213, 343.

examples of ancient but unrecorded arms often mentioned as an instance in which the Records (*sic*) of the College of Arms are at fault, perhaps I may be pardoned for adding that the shield *is* recorded (*sic*). The crest and supporters are not..... the supporters now used . . . . . are not recorded (*sic*)<sup>1</sup>

This is an instance of the triumphant scoffs,—scoffs, doubtless, which impress the public,—in which the writer is apt to indulge. Unluckily for him, it only exposes his own carelessness or ignorance.

If the reader will refer to that organ of his views, the *Genealogical Magazine* (October, 1898) he will find Mr. Fox-Davies there re-printing, “from an article in the ‘City Press’ (August 19 and 25, 1896),” his fuller criticisms on the “armorial achievement” of the City of London. We there read :

The arms are not (*sic*) recorded in the College of Arms officially, or by virtue of any formal warrant, and for some reason or other, which it is difficult to surmise, were omitted in the various Visitations of the City taken at different times, but the shield, and that only, duly appears amongst the collections of Vincent, retained in the Heralds’ College, and none will dispute the weight this carries inside or outside the College (II, 249).

Anxious to be strictly fair to the writer, I have stated his position in his own words.

Is it then the case that the arms are “recorded,” that they are duly entered in the College “Records,” as the *Complete Guide* so confidently asserts? The answer is simple: it is *not* the case. “Records,” “on record,” “recorded,” are specialised terms at

<sup>1</sup> *The Complete Guide*, pp. 329-330.

the College : they have to be used with the greatest care. For, according to the doctrine of Mr. Fox-Davies, everything turns upon their use ; arms are " good " or " bad," " legal " or " illegal," according as they are recorded, or not recorded. " The city of London," we read, " is entitled to bear " its arms,<sup>1</sup> but " of the crest and supporters there is no record whatsoever in the College of Arms ; consequently they are not legal."<sup>2</sup> In the graceful words of *The Complete Guide*, " the City of London uses..... a bogus modern crest, and even more modern bogus supporters, so a few other eccentricities need not, in that particular instance, cause surprise" (p. 382).

On enquiring in the highest quarter whether " the collections of Vincent " are accepted by the officers of arms as " records," I am definitely informed that "*they are not*".<sup>3</sup>

Let us consider the position. It is the very kernel of the doctrine held by Mr. Fox-Davies and by ' X ' that " arms," in the latter's words, " are good or bad as they are recorded or unrecorded " at the College. Surely, therefore, if there is one point on which one would expect Mr. Fox-Davies to be more especially careful, it is the use of the word " recorded." Yet writing, we learn " with a fulness of knowledge which it is hoped will render the work a *standard* one in time to come," he does not even know, we find, what constitutes a " record " in the eyes of those officers of arms

<sup>1</sup> *Gen. Mag.* II, 249.

<sup>2</sup> *Genealogical Mag.* II, 251.

<sup>3</sup> The point is of some importance, as will be seen elsewhere in this volume. For if they were so accepted, the College would stand committed to any fabulous pedigrees they might contain.

who "have the *sole* authority and control in armorial matters."

It is therefore, as I said, *not* the case that the arms of the City of London are "recorded" and are consequently "legal" by his own test. He cannot even play his own game.

That the term "record" has for him no intelligible meaning, is shown by a phrase which he has used twice over:—

<p>The authority for this statement is doubtless an entry in one of the records of the College of Arms (R. 22, 67) which is itself a copy of another record.<sup>1</sup></p>	<p>There is in one of the records of the College of Arms (R. 22, 67) which is itself a copy of another record, the following statement.<sup>2</sup></p>
--	---

How can that which is only "a copy" of a record be itself a record? Moreover, even the original, in this case, has no pretension to be a record. As I explained long ago, "this precious 'record' is not a record at all, but is a mere copy of a monastic narrative, which is grossly and demonstrably inaccurate."<sup>3</sup>

When we read, of the Mowbrays' ostrich feathers, that

Contemporary proof of the use of badges is often difficult to find.... But there seems to be very definite authority for the existence of the badge (p. 465)

one marvels that this should be sought in such secondary evidence, when the true contemporary proof exists in the series of Mowbray seals.

<sup>1</sup> *Gen. Mag.* (1899) II, 401.

<sup>2</sup> *Complete Guide*, p. 465.

<sup>3</sup> *Studies in Peerage and Family History*, p. xiv.

Let us now test Mr. Fox-Davies at another point. The Prospectus to the 6th and latest edition of *Armorial Families* devotes one of its pages to "some points in Scottish Heraldic Law." It is there laid down, in emphatic Clarendon type, that

A Scottish Coat of Arms must be entered in Lyon Register to be lawful and valid.... A Scottish Coat of Arms (unlike an English Coat of Arms) can only belong to the head of the family (by blood) for the time being, descending only to each heir-male in succession, and can be transmitted *as a quartering only* by the heir of line in cases where the heir of line and heir male are not identical.

Yet *Armorial Families* (a previous edition) admits as valid, *not* as a quartering, but as the actual coat of a Scottish landowner, the undifferenced arms of his mother's ancient house (though she was *not* its heir of line). And his arms, moreover, are *not* "entered in Lyon Register." Again we see that Mr. Fox-Davies cannot play his own game.

And now for a crowning proof. On the first page of the Prospectus we hear the trumpet's blast :—

From the standpoint of an accurate authority upon the official validity of armorial bearings, the reputation of 'Armorial Families' has rapidly increased and is unchallengeable.

Is it indeed? We have but to turn over a few pages of this very prospectus to find among its specimen coats, there selected, one with the startling heading :—



MAYHEW (temp. Henry III; ped. H. Coll.) Gules a chevron vair between three ducal coronets or.

The words within brackets mean that the earliest recognition of the arms was in the time of Henry III, and that the right to them is proved by a pedigree in the Heralds' College.<sup>1</sup> As the very earliest of our rolls of arms is no older than Henry III, it was fairly staggering to learn that a family of modest ancestry possessed this feudal distinction.

The pedigree of this family of Mayhew is well worth some discussion, not as of any interest in itself,—for the family was quite obscure,—but as an excellent illustration of what is described in 'Burke's Landed Gentry' as

The constant increase in our genealogical knowledge, due in a great manner to the patient and untiring labours of the families themselves.<sup>2</sup>

We have already seen how, in the same work, the pedigree of Smith-Carington flew back to the Norman Conquest, thanks to what Dr. Copinger terms the "untold enthusiasm" and "indefatigable energy" of Mr. Richard Smith-'Carington.' We have also seen how the Godman pedigree was hurried back towards the same goal in the same indulgent work. We will now deal with that of Mayhew.

Its development was contemporary with theirs. In Dr. Marshall's *Genealogist's Guide* (1893) we seek in vain for the Mayhew family among those

<sup>1</sup> So, for instance, on the opposite page we read, above the arms of Lydall " (Vn. Berks 1664; Ped. H. Coll.) "

<sup>2</sup> Preface to 1906 edition.

whose pedigrees are in print. But in 1894 the family was allotted some four columns in 'Burke's Landed Gentry,' and was there allowed arms. But on close investigation we discover that this 'Lineage' comprises really four families of the name. The pedigree of that with which we are concerned begins there as follows :

Another branch of the family of Mayhew of Brockley, who used (*sic*) the old arms, settled at Church House, in the parish of Aldam (*sic*) co. Essex in the time of Queen Elizabeth. From the first settler descended *Robert Mayhew*, Esq. of Aldham, b. about 1665.

This definite statement has been, we shall see, abandoned, and, as in the Godman case, another 'opening' adopted.

As a matter of fact, the pedigree was at that time so obscure that John Mayhew, an ancestor who died in 1825, was made the son of "Robert Mayhew, Esq.," by "Elizabeth dau. of C. Richardson Esq.," though his mother now figures as "d. of Argor Negus of Church House, Aldham." The obscurity of the family, at Aldham, in the 18th century, can, as it happens, be proved ; for Morant, whose standard history of Essex appeared in 1768, was himself rector of the parish, and gives a careful list of those who owned land within it. And among them we seek in vain for any Mayhew. Although the pedigree describes Robert Mayhew (d. 1745) as "of the manor of Aldham Hall," we know from Morant that, when he wrote, this manor and Church House both belonged to the White family and that no Mayhew had ever held either of them.

The family, apparently, were tenant farmers and married farmers' daughters. Indeed, at least as late as 1869, as Essex Directories show, there were "farmers" of the name at Aldham.

A new "opening," as I said, has now been found for the pedigree. Robert, with whom the 'lineage' began, is not now stated to descend from a Mayhew who settled at Aldham "in the time of Queen Elizabeth:" he is made the son of a Robert Mayhew of Hawkedon, Suffolk, whose very existence is ignored in the pedigree of the Suffolk Mayhews in the 1894 edition of the same work. Whether he is rightly identified or not is a matter of small consequence, for so obscure was the family at the time that for four generations in succession the very surnames of the wives are unknown. And the descent alleged is only from a race of copyhold farmers in Suffolk.

But what concerns us is the real status of this founder of the family at Aldham, who, we now read, "purchased lands in (*sic*) the manor of Aldham Hall, 1712." We search for this Robert Mayhew—who was about contemporary with Robert Smith, the ancestor of the Smith-Carington family—and in the 'Oath Book' of the neighbouring town of Colchester we run him down at last. On July 24, 1729, there was admitted as a free burgess—in company with farmers etc. from the neighbourhood—"Robert Mayhew, of Ford Street, *smith*." <sup>1</sup> We may, I think, assure the

<sup>1</sup> Ford Street is the actual village in the parish of Aldham and adjoins Fordham, in which also Robert Mayhew is alleged to have purchased land. See, for the entry, *Colchester Oath Book*, p. 231. We are indebted, for this work, to the industry and public spirit of Mr. W. Gurney Benham, sometime Mayor of Colchester.

sons of Sir Bernard Burke,<sup>1</sup> to say nothing of Mr. Fox-Davies, that our smith's arms were brawny arms, and that, in a famous phrase, he "used no other."

Such facts as these give a strange zest to the passage with which the preface of Messrs. Burke Brothers opens. Their work, we learn,—

comprises the genealogical history of that class in society which ranks in importance next to the privileged order<sup>2</sup>—the untitled country gentleman—a class, be it remembered, not one degree below the other in antiquity of descent, etc..... Invested with no hereditary titles, but inheriting landed estates, transmitted from generation to generation, in some instances from the period of the Conquest and the Plantagenets, this class has held and continues to hold the foremost place in each county.

This must have proved eminently gratifying to the *five hundred* fresh families admitted *en masse* into this edition.<sup>3</sup>

And now for Mr. Fox-Davies and his "unchallengeable" work. Here, taken from this same Prospectus, is his 'English Heraldic Law':—

a right to bear Arms at the present day depends in England upon direct descent in the male line from some person to whom Arms have been granted by patent, or from some other person whose right to Arms was registered or confirmed at the Visitations.

That, in a nutshell, is his whole case; by it he stands or falls. How then does the "Heralds' College pedigree" prove the right of these Mayhews to bear the coat assigned to them in this Pros-

<sup>1</sup> Who edited the *Landed Gentry* in 1894.

<sup>2</sup> This 'order' appears to consist of the peers and the baronets.

<sup>3</sup> "More than five hundred additional pedigrees" (Preface to 1894 edition).

pectus? Does it show their descent "from some person to whom Arms have been granted by Patent"? Or does it trace their "descent from some other person whose right to Arms was registered or confirmed at the Visitation"? *It does neither.* It does not even attempt to show any hereditary right to arms: still less does it extend to the days of Henry III. It is traced only to a copyhold tenant in the 16th century.<sup>1</sup>

Now let the reader understand what this means. It means that we need not even travel outside the four corners of Mr. Fox-Davies' prospectus to learn, from an instance of his own selection, the utter worthlessness of its loud pretension to be "an accurate authority upon the official validity of armorial bearings"..... "an authoritative work which should plainly distinguish the armorial bearings which were borne in the United Kingdom by proved and official authority". Those who may desire such information must go, not to *Armorial Families*, but to Heralds' College itself.

"It is difficult," we read in this same Prospectus, "to understand the state of mind that can care or wish to display Arms or Crest to which an unquestioned title cannot be shown." What most of us would find it hard to understand is how a "state of mind" can display either arms or crest. But Mr. Fox-Davies, in his rash excitement, breaks the fetters of English prose. What one has to insist on is that here is the very case which he has always so fiercely denounced, that of a family which, by his own rules, cannot prove its

<sup>1</sup> See the pedigree, as set forth in 'Burke's Landed Gentry' (1906).

right to arms. And it is he himself who aids and abets it by recognising, as we have seen, its right to an ancient coat. The exposure is complete.

We read, still in this same Prospectus, of

the storm of popular protest and vituperation with which the book was first greeted, and which it has successfully lived through.

But its author cannot dispose of such grave criticism as this, criticism based upon his own words, by terming it 'vituperation'. Unless he can rebut that criticism, the authority of his work is gone.

To the heraldic expert, however, the real student of heraldry, the most amazing part of the business is the "*temp.* Henry III." Can Mr. Fox-Davies be so ignorant of heraldry as to think that this Tudor coat<sup>1</sup> dates from the days of Henry III? Does he know the authorities for coats of that remote date? He cannot, apparently have realized how amazingly rare is the distinction which he accepts without hesitation, or he would have sought at least for some authority for his statement. It is, of course, sheer fiction.

For the source of this wild statement I long sought in vain. Then there flashed upon me its only possible explanation. On a roll attributed to the time of Henry III ('1240-1245') there is a coat assigned to "Herbert le Fitz Mahewe." But it has not the faintest resemblance to the Tudor coat of Mayhew. It is, in fact, the well-known coat of a wholly different family, the great house

<sup>1</sup> Its first official recognition, apparently, was at the Suffolk Visitation of 1664; but a variant of the coat is found at an Elizabethan visitation in Norfolk.

of Fitzherbert, in the form borne by one of its cadets, Herbert the son of Mathew! <sup>1</sup>

The contempt of Mr. Fox-Davies for the heraldry of the Middle Ages, for "parchments already musty with age," has borne its natural fruit and exposed his ignorance to the world.

The author of the so-called *Complete Guide* has brought this exposure on himself. It is the right, nay more, it is the duty of those who have made these things their serious study, to warn the public that more is needed to make one an authority on heraldry than the loud beating of one's drum or a blast upon one's own trumpet. Scholars can appraise at their right value the pretensions of one who informs his readers that *gens* means 'a man,' who imagines that a public record is preserved in the Tower of London, who discovers, in a grant of "the arms of St. Edward," a "grant of the arms of Plantagenet," whose ignorance of heraldry is so great that he is puzzled even by the arms of the Lords Ferrers of Groby and believes "fractured castles" were borne by the Lords Willoughby, and, lastly, who confuses a family of farmers with a race of feudal barons.

To him they leave that heraldry of to-day which he has succeeded in reducing to an even lower level as the means of flattering the newly risen by proclaiming them, in virtue of a grant of arms, as holders of "the lesser nobility" or parading them as "gentlemen of coat-armour." Let him henceforth confine himself to this field, and learn, at least, to play there according to his own rules.

<sup>1</sup> 'Maheu' in French.

For them the science of the shield has another and a worthier aim; to them it speaks in its own tongue on church and manor-house, on the monument and the seal; it illumines those "parchments and writings already musty with age," and makes the storied past live and move before their eyes. It brings to their minds the tournament and the joust, and the knight harnessed for battle. They think of Evesham, of the great earl, scanning the tumult of banners in front of that advancing host—his life hanging on the arms they bore. He saw at last the lions of England, the chevrons of the house of Clare, and cried, as the fatal coats told him that all was over, "Let us commend our souls to God, for our bodies are the foe's."

In the words of one who, in his knowledge of heraldry, stands to-day supreme:—

For us at least the study of the use of arms in its native age, an age which has passed utterly away, is all that remains for the student of armory. By such study we shall add in some humble measure to the knowledge of the history of our land, and looking away from a grey and ordered time we shall delight our eyes with the fantastic beauty of that true armory, chief tirewoman to those dead years which once went in scarlet with ornaments of gold on their apparel.<sup>1</sup>

<sup>1</sup> Mr. Oswald Barron in *The Ancestor*, VI, 174.

FINIS



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